98TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 98-655
Part 2

RETIREMENT EQUITY ACT OF 1984

MAY 17, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 4280 which on November 2, 1983, was referred jointly to the Committee on Education and Labor and the Committee on Ways and Means]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4280) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954 to improve the delivery of retirement benefits and provide for greater equity under private pension plans for workers and their spouses and dependents by taking into account changes in work patterns, the status of marriage as an economic partnership, and the substantial contribution to that partnership of spouses who work both in and outside the home, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

The Committee on Education and Labor filed its report on this bill on April 5, 1984 (H. Rept. No. 98-655). The explanation of the bill that follows relates only to title II of the bill (the revenue title) as amended by the Committee on Ways and Means.

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I. SUMMARY

1. Periods of Employee Service Taken Into Account Under Pension, Profit-Sharing, and Stock Bonus Plans

Maximum age conditions.—The bill reduces from 25 to 21 the maximum age a qualified pension, profit-sharing, or stock bonus plan ("qualified plan") generally can require an employee to attain as a condition of becoming a participant in the plan. Additionally, a plan is not permitted to ignore service after age 18 for purposes of determining the vested portion of a participant's benefit. The bill makes conforming changes to the maximum age conditions for employees of certain educational institutions.

Break in service rules.—The bill provides that, in the case of a nonvested participant, years of service with the employer or employers maintaining a qualified plan before any period of consecutive 1-year breaks in service are required to be taken into account for participation and vesting purposes after a break in service unless the number of consecutive 1-year breaks in service equals or exceeds the greater of (1) 5 years or (2) the aggregate number of years of service before the consecutive breaks in service.

In addition, the bill provides that, in the case of a participant in certain plans, years of service after a break in service must be counted for purposes of determining the vested percentage of the participant's accrued benefit derived from employer contributions before the break in service unless the participant incurs at least 5 consecutive 1-year breaks in service.

Maternity and paternity leave.—The bill provides rules relating to crediting of service for cases in which an employee is absent from work because of maternity or paternity leave. Under the bill, certain hours of absence (up to 501 hours) on account of pregnancy, birth, adoption, or certain child care are taken into account in determining whether a break in service has occurred under the participation and vesting rules.

2. Survivor Benefit Requirements

Under the bill, a defined benefit or money purchase pension plan is required to provide automatic survivor benefits (1) in the case of a participant who retires under the plan, in the form of a qualified joint and survivor annuity, and (2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, in the form of a qualified preretirement survivor annuity. The automatic survivor benefit also applies to any participant under a profit-sharing or stock bonus plan unless (1) the participant does not elect benefits in the form of a life annuity, (2) the plan pays the full vested account balance to the participant's surviving spouse if the participant dies, and (3) the plan is not a direct

or indirect transferee of a plan required to provide automatic survivor benefits.

Under the bill, a participant is to be given the opportunity to waive the qualified joint and survivor annuity and the qualified preretirement survivor annuity unless the plan fully subsidizes the cost of the benefits. In addition, an election to waive a qualified joint and survivor annuity or a qualified preretirement survivor annuity is not effective unless it is in writing and is signed by the participant and the participant's spouse.

The bill defines the period during which a participant may waive a survivor benefit (or revoke such a waiver) to mean (1) in the case of a qualified joint and survivor annuity, a period of time not to exceed 90 days before the annuity starting date; or (2) in the case of a qualified preretirement survivor annuity, a period beginning on the first day of the plan year in which the participant attains age 35 and ending on the date of the participant's death.

3. Assignment or Alienation of Benefits in Divorce, Etc., Proceedings

In the case of certain judgments, decrees, or orders relating to child support, alimony payments, or marital property rights pursuant to a State domestic relations law (a qualified domestic relations order), the bill clarifies that such orders do not result in a prohibited assignment or alienation of benefits under the spendthrift provisions of the Code. In addition, an exception to the general ERISA preemption rule is provided for qualified domestic relations orders.

The bill requires that a qualified domestic relations order identify the parties involved and provide specific instructions for determining the portion of plan benefits payable to an alternate payee (a spouse, former spouse, or child) under the order. The bill requires that benefits under the order be in a form otherwise provided by the plan. The bill provides procedures to be followed by the plan administrator when the benefits payable under an order are in dispute.

4. Cash Out of Certain Accrued Benefits

The bill is treated as providing nonforfeitable benefits even if the plan provides for a cash out of a separated participant's benefit without the participant's consent if the value of the benefit does not exceed $3,500. The limit under present law is $1,750. For purposes of determining the present value of the participant's benefit, the plan may not use an interest rate that is greater than the rate used by the Pension Benefit Guaranty Corporation (PBGC) for valuing a lump sum distribution upon plan termination.

5. Notice of Forfeitability of Benefits

Present law requires that a plan furnish a participant with a statement of benefits under certain circumstances. The bill requires that the statement include a notice that certain benefits may be forfeitable in the event the participant dies before a particular date.

6. Notice of Rollover Treatment

Under present law, a plan administrator is not required to notify a plan participant receiving a qualifying rollover distribution that the distribution may be rolled over, tax-free, within 60 days of the date of the distribution. The bill requires the plan administrator to provide this notice.

7. Cutback in Accrued Benefits

Under present law, a plan is not a qualified plan unless it provides definitely determinable benefits. A qualified plan may not be amended to reduce previously accrued benefits. Under the bill, two IRS revenue rulings interpreting these requirements are codified.

8. Study by the General Accounting Office

The bill directs the General Accounting Office (GAO) to conduct a detailed study of the effect on women of the rules relating to pension, profit-sharing, and stock bonus plans. The results of this study are to be reported to various committees of the Congress no later than January 1, 1990.

9. Effective Dates

The provisions of the bill generally are effective for plan years beginning after December 31, 1984. In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified by the date of enactment between employee representatives and one or more employers, the provisions are not effective for plan years beginning before the earlier of (1) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension agreed to after the date of enactment) or (2) January 1, 1987. A special effective date applies with respect to the qualified survivor benefit provisions.

II. EXPLANATION OF THE BILL

A. Periods of Employee Service Taken Into Account Under Pension, Profit-Sharing, and Stock Bonus Plans (Sec. 202 of the bill and secs. 410 and 411 of the Code)

Present Law

Minimum participation, vesting, and benefit accrual requirements

In general

If a pension, profit-sharing, or stock bonus plan qualifies under the tax law (qualified plan),[1] then (1) a trust under the plan generally is exempt from income tax, (2) employers generally are allowed deductions (within limits) for plan contributions for the year for which the contributions are made even though participants are not taxed on plan benefits until the benefits are distributed, (3) benefits distributed as a lump sum distribution are accorded special long-term capital gain or 10-year income averaging treatment, or may be rolled over, tax-free, to an individual retirement account (IRA) or to another qualified plan, and (4) limited estate and gift tax exclusions may be available.

Under a qualified plan, benefits are provided to participants under plan formulas that determine the amount of the benefit a participant may earn, the portion of that benefit that has been earned, and the portion of the earned benefit that is vested or nonforfeitable. Accordingly, plans provide rules for determining whether an employee is a plan participant (the employee participation rules), for measuring benefits (the benefit formula), for determining the portion of the benefit that has been earned (the benefit accrual rules), and for determining the vested percentage of a participant's accrued benefit (the vesting schedule). If a joint and survivor benefit is not provided and the participant dies before payment of benefits commences, the participant's surviving spouse may not be eligible to receive benefits under the plan.

Under present law, a qualified plan must satisfy certain minimum standards relating to the conditions under which employees may be excluded from plan participation, to the method under which plan benefits are accrued, and to the vesting schedule. The participation standards limit the permissible exclusions based on the age and period of service completed by an employee.[2] The benefit accrual standards are based upon the number of years of plan participation. The vesting schedule standards are generally based

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[1] Sec. 401(a) of the Code.

[2] In addition, the Code provides minimum coverage rules for qualified pension plans. These rules are designed to require that qualified pension plans provide participation to a minimum percentage of employees or to a broad cross-section of employees.

upon the number of years of service with the employer that the employee has completed.

Participation

Under present law,[3] a qualified plan generally may not require an employee to complete more than one year of service or attain an age greater than 25 as a condition of plan participation.[4]

For purposes of the participation requirements, the term "year of service" generally means a consecutive 12-month period during which an employee has worked at least 1,000 hours.[5] The first 12-month period is measured from the date the employee begins service with the employer (or, under certain circumstances, a predecessor employer). Accordingly, an employee has fulfilled the year of service requirement if at least 1,000 hours of service are completed by the first anniversary date of employment. Later 12-month periods may be based on the plan year.

Vesting

The rules for plan qualification generally require that a plan meet one of three alternative minimum vesting schedules.[6] Under these schedules, an employee's right to accrued benefits derived from employer contributions become nonforfeitable (vest) to varying degrees upon completion of specified periods of service with an employer (or, under certain circumstances, a predecessor employer). An employee's right to benefits derived from employee contributions is immediately nonforfeitable.

Under one of the minimum schedules, full vesting is required upon completion of 10 years of service (no vesting is required before the end of the 10th year).[7] Under a second schedule, vesting begins at 25 percent after completion of 5 years of service and increases gradually to 100 percent after completion of 15 years of service.[8] Under these two vesting schedules, all years of service with the employer maintaining the plan after attainment of age 22 generally must be taken into account for purposes of determining an employee's vested percentage. The third schedule takes both age and service into account, but in any event requires 50 percent vesting after 10 years of service and an additional 10 percent vesting for each year thereafter until 100 percent vesting is attained after 15 years of service.[9] Under this schedule, all years of service with the employer (including years of service prior to age 22) must be taken into account for purposes of determining an employee's vested percentage if, during those years, the employee participated

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[3] Sec. 410(a) of the Code.

[4] Accordingly, an employee generally may not be excluded from plan participation on the basis of length of service if the employee has completed one year of service and generally may not be excluded on the basis of age if the employee has attained age 25. An employee who has completed one year of service and who has attained age 25 may, however, be excluded from plan participation on other grounds (for example, a plan may be limited to employees within a particular job classification).

[5] Sec. 410(a)(3) of the Code.

[6] Sec. 411(a) of the Code.

[7] Sec. 411(a)(2)(A) of the Code.

[8] Sec. 411(a)(2)(B) of the Code.

[9] Sec. 411(a)(2)(C) of the Code.

in the plan. A faster vesting schedule is required if the employer maintains a qualified plan that is a top-heavy plan.[10]

Under present law, certain forfeitures of vested benefits are permitted. Thus, a right to an accrued benefit derived from employer contributions is not treated as forfeitable merely because the plan does not pay benefits after the participant dies (other than the payment of a survivor benefit required under the qualified joint and survivor annuity rules).

Break in service rules

In general, all years of service with the employer maintaining a qualified plan are taken into account for purposes of the minimum participation requirements. No credit need be provided, however, for periods during which an employee is considered to have a break in service. In some cases, an employee who returns to work for an employer after a break in service may lose credit for pre-break service.

A plan may provide that a 1-year break in service occurs in a 12-month measuring period in which the employee does not complete more than 500 hours of service.[11] If an employee has incurred a 1-year break in service, the plan may require a 1-year waiting period before reentry. Upon reentry, under the "rule of parity," the employee's pre-break and post-break service generally are required to be aggregated, and the employee is required to receive full credit for the reentry waiting period service if any part of the employee's benefit derived from employer contributions was vested or if the number of 1-year breaks in service is less than the number of years of service completed before the break.[12] A plan may provide that an employee who completes more than 500 hours of service but fewer than 1,000 hours of service has neither a 1-year break in service nor a year of service for participation purposes.

Break in service rules also apply under the vesting rules. The break in service rules applicable in determining the number of years of service taken into account for vesting purposes under a defined benefit plan[13] are similar to the rules applicable for purposes of determining the number of years taken into account for purposes of determining plan participation. A special break in service rule applies for purposes of the vesting rules in the case of a defined contribution plan.[14] Post-break service need not be taken into account under such a plan in determining the nonforfeitable percentage for employer contributions made before the break in service.[15]

Benefit accruals

Present law [16] requires that a participant in a qualified pension plan accrue (earn) the normal retirement benefit provided by the

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[10] Also, faster vesting may be required to prevent discrimination in favor of employees who are officers, owners, or highly compensated.

[11] Sec. 410(a)(5) of the Code.

[12] Sec. 410(a)(5) of the Code.

[13] Other than certain defined benefit plans funded solely with insurance contracts.

[14] This special rule also applies for certain defined benefit plans funded solely with insurance contracts.

[15] Sec. 411(a)(6)(C) of the Code.

[16] Sec. 411(b) of the Code.

plan at certain minimum rates. The accrual rules are designed to limit backloading of benefit accruals as a technique to avoid the minimum vesting standards. Under a backloaded accrual schedule, a larger portion of the benefit is earned each year in later years of service. Accordingly, under a plan with backloaded accruals, an employee who separates from service before reaching retirement age earns a disproportionately lower share of the benefit.

Maternity or paternity leave

For purposes of the minimum participation, vesting, and benefit accrual requirements, a qualified plan is not required to give an employee credit for periods of time during which the employee is not compensated for maternity or paternity leave. A qualified plan is required to credit up to 501 hours of service, which is sufficient to prevent a break in service, for paid maternity or paternity leave.

Reasons for Change

Your committee recognizes that the rules of present law relating to the maximum age conditions and years of service counted for vesting service tend to disadvantage women workers. In addition, the present law break in service rules often make it difficult for an individual to take an adequate leave of absence from work on account of the birth or adoption of a child without loss of credit for participation and vesting purposes under the employer's qualified plan.

Explanation of Provision

Maximum age conditions

The bill provides that a qualified plan may not require, as a condition of participation, completion of more than one year of service or attainment of an age greater than 21 (whichever occurs later).[17]

Under the bill, a plan is not permitted to ignore, for purposes of the minimum vesting requirements, an employee's years of service completed after the employee has attained age 18.

Break in service rules

The bill provides that, in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service are required to be taken into account after a break in service unless the number of consecutive 1-year breaks in service equals or exceeds the greater of (1) 5 years or (2) the aggregate number of years of service before the consecutive 1-year breaks in service. As under present law, if any years of service are not required to be taken into account by reason of a period of breaks in service under this rule, then those years of service are not required to be taken into account under the bill if there is a subsequent break in service. This "rule of parity" is applicable for participation and vesting purposes.

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[17] In addition, the bill changes the maximum age requirement under a plan maintained exclusively for the benefit of employees of certain tax-exempt educational organizations (sec. 410(a)(1)(B)(ii) of the Code) from 30 to 26.

For example, if a nonvested participant with 3 years of service under a plan terminates employment and incurs 4 consecutive 1-year breaks in service, the plan generally is not permitted to disregard the participant's 3 years of service for either participation or vesting purposes upon the participant's resumption of employment with the employer. On the other hand, if the participant incurs 5 consecutive 1-year breaks in service under this example, the plan could disregard the years of service prior to the break in service.

In addition, the bill provides that, in the case of a participant in a defined contribution plan or in a defined benefit pension plan funded solely by insurance contracts, years of service after a break in service are counted for purposes of determining the vested percentage of the participant's accrued benefit derived from employer contributions before the break in service unless the participant incurs at least 5 consecutive 1-year breaks in service.

Maternity or paternity leave

Under the bill, for purposes of determining whether a break in service has occurred for participation and vesting purposes, an individual is deemed to have completed hours of service during certain periods of absence from work. This rule applies to an individual who is absent from work (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child in connection with the adoption of the child by the individual, or (4) for purposes of caring for the child during the period immediately following the birth or adoption.

Your committee intends that an individual will qualify for this maternity or paternity leave credit if a child is placed with the individual for a trial period prior to adoption. No credit need be given, however, merely by reason of the placement of a child in a foster home.

During the period of absence, the individual is treated as having completed (1) the number of hours that normally would have been credited but for the absence, or (2) if the normal work hours are unknown, eight hours of service for each normal workday during the leave (whether or not approved). The total number of hours of service required to be treated as completed under the bill is 501 hours.

The hours of service required to be credited under the bill must be credited only (1) in the year in which the absence begins for one of the permitted reasons if the crediting is necessary to prevent a break in service in that year, or (2) in the following year. For example, an individual who completes at least 501 hours during a year before leaving employment by reason of pregnancy is entitled to credit of up to 501 hours in the next year, because such credit is not needed in the year in which the absence begins.

An employer may require, as a condition of providing credit for the hours required under this rule, that the individual certify to the employer that the leave was taken for the permitted reasons. This certification could include, for example, a statement from a doctor that the leave was taken by reason of the birth of a child of the individual. In addition, the employer may require that the individual supply information relating to the number of normal work-

days for which there was an absence. Your committee intends that credit will not be denied for failure to supply any required information if the plan administrator has access to the relevant information without regard to whether the participant submits it.

Under the bill, hours credited under these rules for maternity or paternity leave are not required to be taken into account for purposes of determining a participant's year of participation under the benefit accrual rules.

Effective Dates

The service-counting provisions generally are effective for plan years beginning after December 31, 1984. In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified before the date of enactment between employee representatives and one or more employers, the provisions are not effective for plan years beginning before the earlier of (1) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension agreed to after the date of enactment) or (2) January 1, 1987.

The provisions of the bill relating to the maximum age conditions do not apply retroactively. Thus, for example, if an employee with 3 years of service is age 24 on the effective date, the employee is to immediately become a participant in the qualified plan, but need not be given credit, for benefit accrual purposes, for the prior years of service.

With respect to the maternity or paternity leave provision, if a plan credits hours of service in accordance with the requirements of the provision for plan years beginning after the effective date of the provision for the plan (without regard to whether the plan has been amended), the plan (1) need not be amended to meet the requirements of the provision until the plan is first otherwise amended after the effective date and (2) does not fail to provide definitely determinable benefits (within the meaning of the tax qualification rules for pension plans under the Internal Revenue Code) merely because the plan provides the required credit for maternity or paternity leave not specified in the plan.

B. Survivor Benefit Requirements (Sec. 203 of the bill and secs. 401 and 417 of the Code)

Present Law

Under present law,[18] if the normal form of benefits under a qualified plan is a life annuity or if a participant elects benefits in the form of a life annuity under a plan and the participant is married for the 1-year period ending on the date the annuity payments begin, the benefit is to be paid in the form of a qualified joint and survivor annuity unless the participant elects an annuity in another form.[19] A joint and survivor annuity provides benefits for the joint lives of the participant and another individual and, after the death of either, provides a benefit for the life of the survivor.

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[18] Sec. 401(a)(11) of the Code.

[19] For example, a participant may elect a benefit in the form of a single life annuity. If a single life annuity is elected, benefit payments generally end with the death of the participant.

Under a qualified joint and survivor annuity, benefits are payable for the joint lives of the participant and the participant's spouse and if the spouse survives the participant, the survivor benefit to the spouse may not be less than one-half of the benefits payable during the joint lives of the couple.

In the case of a participant who is eligible to retire before the normal retirement age under the plan, and who has not retired, the participant is eligible to elect an early survivor annuity benefit. This benefit is not required to be provided, however, unless the participant affirmatively elects benefits in this form. Thus, under present law, if the plan provides that no benefits will be paid with respect to a participant who dies while still employed but after attaining the plan's early retirement age, the plan need not provide a survivor annuity to the participant's spouse unless the participant, prior to death, had made an affirmative election with respect to the survivor annuity. Moreover, the plan need not make this survivor annuity option available until the later of the time the employee attains the earliest retirement age under the plan or is within 10 years of normal retirement age (whichever is later).

The employee is to be afforded a reasonable opportunity to elect not to receive a qualified joint and survivor benefit before benefit payments begin. This election is effective without regard to whether the participant's spouse consents to the election. A plan may provide that any election, or revocation of an election, with respect to joint and survivor benefits is not effective if the participant dies within a period of time (not in excess of two years) after making the election or revocation (except in the case of accidental death if the accident that causes death occurs after the election).

The Internal Revenue Service has issued regulations interpreting the joint and survivor annuity rules to provide that a plan need not provide a survivor annuity to a surviving spouse if the spouse was not married to the participant for at least the one-year period before the date of death.[20]

Reasons for Change

Your committee believes that present law results in inequitable treatment of participants in qualified plans who die before reaching the normal retirement age under the employer's plan. Under the rules of present law, the participant's spouse may be entitled to no survivor benefits under the plan even though the participant had accrued significant vested benefits before death. Therefore, the committee believes that it is appropriate to provide automatic survivor benefits to the spouses of vested participants.

In addition, because your committee believes that a spouse should be aware of the choices the participant is making with respect to retirement income on which the spouse may also rely, the bill requires spousal consent when a participant elects not to take a survivor benefit.

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[20] Treas. Reg. sec. 1.401(a)-11(d)(3).

Explanation of Provision

In general

Under the bill, a qualified plan is to provide automatic survivor benefits (1) in the case of a participant who retires under the plan, in the form of a qualified joint and survivor annuity and (2) in the case of a vested participant who dies before the annuity starting date (the first period for which an amount is received as an annuity (whether by reason of death or disability) under the plan) and who has a surviving spouse, in the form of a qualified preretirement survivor annuity. A vested participant is any participant (whether or not still employed by the employer) who has a nonforfeitable right to any portion of the accrued benefit derived from employer contributions.

The provisions of the bill requiring automatic survivor benefits apply to any qualified plan. An exception is provided, however, for a participant under a profit-sharing or stock bonus plan if (1) the plan provides that the nonforfeitable accrued benefits will be paid to the surviving spouse of the participant (or to another beneficiary if the surviving spouse consents or if there is no surviving spouse) if the participant dies, (2) the participant does not elect payment of benefits in the form of a life annuity, and (3) with respect to the participant, the plan is not a transferee of a plan required to provide automatic survivor benefits. A plan is a transferree of a plan required to provide automatic survivor benefits if the plan (1) receives a direct transfer of assets in connection with a merger, spinoff or conversion of a plan or (2) receives a direct transfer of assets solely with respect to the participant. Also, a plan is a transferee if it receives amounts from a profit-sharing or stock bonus plan that is a transferee.

Qualified joint and survivor annuity and qualified preretirement survivor annuity

Under the bill, a qualified joint and survivor annuity is an annuity for the life of the participant with a survivor annuity for the life of the spouse that is not less than 50 percent (and not greater than 100 percent) of the amount that is (1) payable during the joint lives of the participant and the spouse and (2) the actuarial equivalent of a single life annuity for the life of the participant. A qualified joint and survivor annuity also includes an annuity having the effect of a qualified joint and survivor annuity, which is defined as a benefit at least the actuarial equivalent of the normal form of life annuity or, if greater, any optional form of life annuity. Equivalence may be determined on the basis of consistently applied reasonable actuarial factors if such determination does not result in discrimination in favor of employees who are officers, shareholders, or highly compensated.

The bill defines a qualified preretirement survivor annuity as an annuity for the life of the surviving spouse of the participant. The amount of the payments under a qualified preretirement survivor annuity is not to be less than the payments that would have been made under the qualified joint and survivor annuity if (1) in the case of a participant who dies after attaining the earliest retirement age under the plan, the participant had retired with an im-

mediate qualified joint and survivor annuity on the day before the participant's death and (2) in the case of a participant who dies on or before the earliest retirement age under the plan, the participant had separated from service on the date of death, survived until the earliest retirement age, and retired at that time with a qualified joint and survivor annuity. Of course, the incidental benefit rule of present law is required to be satisfied with respect to the preretirement survivor benefit. Under the bill, the earliest period for which the qualified preretirement survivor annuity is payable to the surviving spouse begins with the month in which the participant would have reached the earliest retirement age under the plan. If the surviving spouse wishes to delay commencement of benefit payments until a later date and the present value of the benefit is more than $3,500 at the earliest retirement date, then the plan cannot require that benefit payments commence at the participant's earliest retirement age.

Election and notice procedures

Under the bill, the participant is given the opportunity to waive the qualified joint and survivor annuity and qualified preretirement survivor annuity during the applicable election period. In addition, the participant is permitted to revoke any waiver during the applicable election period. The bill does not limit the number of times a participant may waive a survivor benefit or revoke a waiver.

The bill provides that the participant's spouse is to consent to decline the qualified joint and survivor annuity and the qualified preretirement survivor annuity. This consent is to be given in writing at the time of the participant's election and the consent is to acknowledge the effect of the election. A consent is not valid unless it is witnessed by a plan representative or a notary public. Any consent obtained is effective only with respect to the spouse who signs it.

The requirement that the consent of the spouse be obtained may be waived if the participant establishes to the satisfaction of a plan representative that the consent required cannot be obtained because there is no spouse, because the spouse cannot be located, or because of other circumstances that the Secretary of the Treasury prescribes by regulation.

If the plan administrator acts in accordance with the fiduciary standards of ERISA in securing spousal consent or in accepting the representations of the participant that the spouse's consent cannot be obtained, then the plan will not be liable for payments to the surviving spouse. In addition, if a third-party payor relies on a consent obtained by the plan administrator who acts in accordance with the fiduciary standards, the payor will be relieved of any liability for payments to the surviving spouse.

As under present law, the plan is required to provide to the participant, within a reasonable period of time before the annuity starting date, a written explanation of (1) the terms and conditions of the qualified joint and survivor annuity, (2) the participant's right to make, and the effect of, an election to waive the qualified joint and survivor annuity, (3) the rights of the participant's spouse, and (4) the right to revoke an election and the effect of

such a revocation. In addition, your committee intends that plans will provide to participants notification of their rights to decline a qualified preretirement survivor annuity within a reasonable period before the applicable election period. This notice may be provided by including a description of the participant's right to waive a qualified preretirement survivor annuity in the summary plan description or summary of major modifications. In addition, notice may be posted.

Under the bill, a plan is not required to provide notice of the right to waive the qualified joint and survivor annuity or the qualified preretirement survivor annuity if the plan fully subsidizes the cost of the benefit. A plan fully subsidizes the costs of a benefit only if the failure to waive the benefit by a plan participant does not result in either (1) a decrease in any plan benefits with respect to the participant, or (2) in increased plan contributions by the participant. A plan that provides for no employee contributions and does not require employee contributions if the participant does not waive any survivor benefits is treated as not requiring increased plan contributions by the participant. A plan may fully subsidize the cost of the qualified joint and survivor annuity, the qualified preretirement survivor annuity, or both.

The bill defines the applicable election period to mean (1) in the case of a qualified joint and survivor annuity, a period of time not exceeding 90 days before the annuity starting date or (2) in the case of a qualified preretirement survivor annuity, a period beginning on the first day of the plan year in which the participant attains age 35 and ending on the date of the participant's death. If a participant separates from service, the applicable election period begins on that date with respect to benefits accrued before the separation from service. For example, if a participant who is age 30 separates from service with vested, accrued benefits of $4,000, the participant is permitted to waive the qualified preretirement survivor annuity with respect to the benefits of $4,000 at the time of separation from service. If the participant returns to service at age 32, the applicable election period with respect to benefits accrued after the participant returns does not begin until the first day of the plan year in which the participant attains age 35. Thus, the participant will have automatic survivor coverage during the period from age 32 to 35 with respect to the vested benefits accrued during that period, without regard to whether the participant waived the coverage with respect to the pre-separation accrued benefits. At age 35, the participant may waive any preretirement survivor annuity coverage.

Special rules

The bill provides that a qualified joint and survivor annuity is not required to be provided by a plan unless the participant and spouse have been married throughout the one-year period ending on the earlier of (1) the participant's annuity starting date (the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability)), or (2) the date of the participant's death. If a participant dies after the annuity starting date, the spouse to whom the participant was married during the one-year period ending on the annuity starting date is

entitled to the survivor annuity under the plan whether or not the participant and spouse are married on the date of the participant's death. This rule does not apply, however, if a qualified domestic relations order (see C. below) otherwise provides for the division or payment of the participant's retirement benefits. For example, a qualified domestic relations order could provide that the former spouse is not entitled to any survivor benefits under the plan.

Under the bill, an exception to the one-year marriage requirement is provided if a participant marries within one year before the annuity starting date and the participant has been married to that spouse for at least one year ending on the date of the participant's death. Your committee recognizes that this exception may create administrative burdens for the plan in cases in which the participant has not been married for one year before the payment of benefits commence. Your committee intends that the plan may require a participant to notify the plan when the participant has been married for one year so that the plan administrator may alter the form of benefit payments to reflect the qualified joint and survivor annuity if the participant and spouse do not waive it.

If a former spouse of a participant is entitled to receive a portion of the participant's benefit under a qualified domestic relations order, the qualified joint and survivor annuity and qualified preretirement survivor annuity requirements do not apply unless they are consistent with the order. A plan is not required to provide a qualified joint and survivor annuity or a qualified preretirement survivor annuity to the spouse of a participant's former spouse.

The bill provides that a plan may immediately distribute the present value of the benefit under either the qualified joint and survivor annuity or the qualified preretirement survivor annuity if the present value of the benefit does not exceed $3,500. No distribution may be made after the annuity starting date unless the participant or the surviving spouse of the participant consents in writing to the distribution. In addition, a plan is not permitted to distribute benefits, the present value of which is less than $3,500, unless (1) the plan provides notice of intent to cash out the benefit to the participant and spouse (or to the surviving spouse, if the participant has died), and (2) permits the participant and spouse (or surviving spouse) to designate (within 60 days after the notice an IRA or another qualified plan as the recipient of the cash out. The plan is permitted to require the participant and spouse (or surviving spouse) to demonstrate that the designated IRA or qualified plan will, in fact, accept the cash out.

In addition, under the bill, if the present value of the benefit under the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $3,500, the participant and spouse (or the surviving spouse if the participant has died) must consent in writing before the plan can immediately distribute the present value. For purposes of calculating the present value of a benefit as of the date of the distribution, the plan is required to use an interest rate no greater than the rate used by the Pension Benefit Guaranty Corporation (PBGC) in valuing a lump sum distribution upon plan termination.

The bill repeals the two-year nonaccidental death rule of present law. Thus, a plan may not provide that any election or revocation

of an election does not take effect if (1) the participant dies within a period not in excess of two years beginning on the date of the election or revocation and (2) the death of the participant is not due to an accident that occurred after the election or revocation.

Consultation with the Secretary of Labor

Under the bill, the Secretary of the Treasury is required to consult with the Secretary of Labor in prescribing regulations under these provisions.

Effective Dates

The qualified joint and survivor annuity and qualified preretirement survivor annuity provisions are effective for plan years beginning after December 31, 1984. In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified by the date of enactment between employee representatives and one or more employers, the provisions are not effective for plan years beginning before the earlier of (1) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension agreed to after the date of enactment) or (2) January 1, 1987.

The qualified joint and survivor and preretirement survivor annuity provisions apply to any participant who performs at least one hour of service under the plan after the date of enactment. In addition, a qualified preretirement survivor annuity must be provided in the case of any participant who (1) performs at least one hour of service under the plan after the date of enactment, (2) dies before the annuity starting date, and (3) dies between the date of enactment and the effective date.

Any election made by a participant after the date of enactment not to take a qualified joint and survivor or a qualified preretirement survivor annuity is not effective unless the participant's spouse consents to the election in the manner provided under the bill.

The bill provides a special transition rule for participants who separated from service under a plan before the date of enactment, and whose benefits are not in pay status as of the date of enactment. Under the bill, if (1) such participant completed at least 1 hour of service under the plan after September 1, 1974, (2) did not complete at least 1 hour of service after the date of enactment of the bill, and (3) the participant's benefit is paid in the form of a life annuity, then the participant's benefit is to be paid in the form of a qualified joint and survivor benefit (as defined by ERISA and the Code before the date of enactment of the bill), unless the participant elects to receive benefits in another form provided by the plan. The bill does not require any special advance notice of the right to make the election. The committee intends that a notice is to be provided at the time the participant applies for benefit payments.

The bill also provides a special transition rule for participants who separated from service under a plan before the date of enactment but after December 31, 1975, and whose benefits are not in pay status as of the date of enactment. Under the bill, if such par-

ticipant (1) completes at least 1 hour of service after December 31, 1975, (2) has completed at least 10 years of service under the plan, (3) has a nonforfeitable right to all or any portion of the accrued benefit under the plan derived from employer contributions, and (4) did not complete at least 1 hour of service after the date of enactment of the bill, then the participant may elect a qualified preretirement survivor annuity as provided by the bill. The bill provides that the election may be made by a participant after the date of enactment of the bill and before the earlier of the participant's annuity starting date and the date of the participant's death.

Under the bill, under the transition rule for qualified preretirement survivor annuities, a plan is not to be required to provide a qualified preretirement survivor annuity with respect to a participant unless the plan has received the participant's election of such a benefit. The bill provides that a notice of the right to make such an election is to be provided by the plan in its summary annual report. The bill provides a penalty for failure to provide the notice. In addition, the bill directs the Secretary of Labor to provide public service announcements informing participants of these transition features.

Under the bill, of course, the benefits provided with respect to a participant whose benefit is paid in the form of a qualified joint and survivor benefit or who has elected a qualified preretirement survivor annuity under either of the transition rules may be actuarially reduced to reflect the cost of the survivor protection.

C. Assignment or Alienation of Benefits in Divorce, Etc., Distributions (Sec. 204 of the bill and secs. 401 and 414 of the Code)

Present Law

Generally, under present law, benefits under a qualified pension, profit-sharing, or stock bonus plan are subject to prohibitions against assignment or alienation (spendthrift provisions.) Under present law,[21] certain provisions of ERISA supersede (preempt) State laws relating to pension, etc., plans. A plan that does not include these required spendthrift provisions is not a qualified plan under the Code, and State law permitting such an assignment or alienation is generally preempted by ERISA.

Several cases have arisen in which courts have been required to determine whether the ERISA preemption and spendthrift provisions apply to family support obligations (*e.g.*, alimony, separate maintenance, and child support obligations). In some of these cases, the courts have held that ERISA was not intended to preempt State domestic relations law permitting the attachment of vested benefits for the purpose of meeting these obligations.[22] Some courts have held that the ERISA preemption provision does not prevent application of State law permitting attachment of nonvested benefits for the purpose of meeting family support obligations.[23]

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[21] Sec. 514 of ERISA.

[22] *See, e.g., American Telephone and Telegraph Co. v. Merry*, 592 F.2d 118 (2d Cir. 1979); *Cody v. Riecker*, 594 F.2d 314 (2d Cir. 1979).

[23] *See, e.g., Weir v. Weir*, 415 A.2d 638 (1980); *Kikkert v. Kikkert*, 427 A.2d 76 (1981).

There is a divergence of opinion among the courts as to whether ERISA preempts State community property laws insofar as they relate to the rights of a married couple to benefits under a pension, etc., plan.[24]

The IRS has ruled that the spendthrift provisions are not violated when a plan trustee complies with a court order requiring the distribution of benefits of a participant in pay status to the participant's spouse or children in order to meet the participant's alimony or child support obligations.[25] The IRS has not taken any position with respect to this issue in cases in which the participant's benefits are not in pay status.

Reasons for Change

Your committee believes that the spendthrift rules should be clarified by creating a limited exception that permits benefits under a qualified plan to be divided under certain circumstances. In order to provide rational rules for plan administrators, your committee believes it is necessary to establish guidelines for determining whether the exception to the spendthrift rules applies. In addition, your committee believes that conforming changes to the ERISA preemption provision are necessary to ensure that only those orders that are excepted from the spendthrift provisions are not preempted by ERISA.

Explanation of Provision

In general

The bill clarifies the spendthrift provisions of the Internal Revenue Code by providing new rules for the treatment of certain domestic relations orders. The bill creates an exception to the ERISA preemption provision with respect to these orders. The bill provides procedures to be followed by a plan administrator and an alternate payee (a child, spouse, or former spouse of a participant) with respect to domestic relations orders.

Under the bill, if a domestic relations order requires the distribution of all or a part of a participant's benefits under a qualified plan to an alternate payee, then the creation, recognition, or assignment of the alternate payee's right to the benefits is not considered an assignment or alienation of benefits under the plan if and only if the order is a qualified domestic relations order. Because rights created, recognized, or assigned by a qualified domestic relations order, and benefit payments pursuant to such an order, are specifically permitted under the bill, State law providing for these rights and payments under a qualified domestic relations order will continue to be exempt from Federal preemption under ERISA.

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[24] In *Stone v. Stone*, 633 F.2d 740 (9th Cir. 1980), the court held that ERISA was not intended to preempt community property laws and that a court order requiring a division of retirement benefits did not violate the anti-assignment provisions. In *Francis v. United Technology Corp.* 458 F.Supp. 84 (N.D. Cal. 1978), however, the court held that ERISA's preemption provision prevents the application of State community property law permitting attachment of plan benefits for family support purposes.

[25] Rev. Rul. 80-27, 1980-1 C.B. 8.

Qualified domestic relations order

Under the bill, the term "qualified domestic relations order" means a domestic relations order that (1) creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a qualified plan and (2) meets certain other requirements. A domestic relations order is any judgment, decree, or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, or child of the participant, and is made pursuant to a State domestic relations law (including community property law). Under the bill, an alternate payee includes any spouse, former spouse, child, or other dependent of a participant who is recognized by a qualified domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to the participant.

To be a qualified order, a domestic relations order must clearly specify (1) the name of the participant and the name and mailing address of each alternate payee to which the order relates, (2) the amount or percentage of the participant's benefits to be paid to an alternate payee or the manner in which the amount is to be determined, and (3) the number of payments or period for which payments are required. Your committee intends that an order will not be treated as failing to be a qualified order merely because the order does not specify the current mailing address of the alternate payee if the plan administrator has reason to know that address independently of the order. For example, if the plan administrator is aware that the alternate payee is also a participant under the plan and the plan records include a current address for each participant, the plan administrator may not treat the order as failing to qualify.

Your committee intends that an order that is qualified remains qualified with respect to a successor plan of the same employer or a plan of a successor employer (within the meaning of sec. 414(a)).

A domestic relations order is not a qualified order if it (1) requires a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan, (2) requires the plan to provide increased benefits, or (3) requires payment of benefits to an alternate payee that are required to be paid to another alternate payee under a previously existing qualified domestic relations order. An order does not require a plan to provide increased benefits if the order does not provide for the payment of benefits in excess of the benefits to which the participant would be entitled in the absence of the order.

The bill provides that a domestic relations order is not treated as failing the requirements for a qualified domestic relations order merely because the order provides that payments must begin to the alternate payee on or after the date on which the participant attains the earliest retirement age under the plan whether or not the participant actually retires on that date. If the participant dies before that date, the alternate payee is entitled to benefits only if the qualified domestic relations order requires survivor benefits to

be paid. In the case of such an order, the payments to the alternate payee at that time are computed as if the participant had retired on the date on which benefit payments commence under the order. Such payments are determined by taking into account only the accrued vested benefits of the participant. If the payments to the alternate payee are determined as a percentage of the participant's accrued benefits, the plan may provide for an increase in the payments to the alternate payee as the participant's accrued benefits increase. Nothing in the bill, however, requires orders to provide for such an increase. Finally, the payments to the alternate payee after the earliest retirement date may be paid in any form permitted under the plan (other than a joint and survivor annuity with respect to the alternate payee and the alternate payee's spouse).

Under the bill, a plan is not treated as failing to satisfy the requirements of section 401(a) or 401(k) of the Internal Revenue Code that prohibit payment of benefits prior to termination of employment solely because the plan makes payments to the alternate payee in accordance with a qualified domestic relations order.

Under the bill, an alternate payee is treated as a beneficiary for all purposes under the plan. In no event, however, will more than one PBGC premium be collected with respect to the participant's benefits (determined as if a qualified domestic relations order had not been issued).

Determination by plan administrator

Under the bill, the administrator of a plan that receives a domestic relations order is required to notify promptly the participant and any other alternate payee of receipt of the order and the plan's procedures for determining whether the order is qualified. In addition, within a reasonable period after receipt of the order, the plan administrator is to determine whether the order is qualified and notify the participant and alternate payee of the determination. The notices required under these rules are to be sent to the addresses specified in the order or, if the order fails to specify an address, to the last address of the participant or alternate payee known to the plan administrator.

The bill authorizes the Secretary of Labor to prescribe regulations defining the reasonable period during which the plan administrator is to determine whether an order is qualified. In addition, the bill provides that plans are to establish reasonable procedures to determine whether domestic relations orders are qualified and to administer distributions under qualified orders.

Suspension of benefit payments

During any period in which the issue of whether a domestic relations order is a qualified order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator is to suspend the payment of any benefits in dispute. These suspended benefits are segregated either in a separate account in the plan or in an escrow account. In the case of a defined benefit plan, the amounts are to be placed in an escrow account.

If the order is determined to be a qualified domestic relations order within two years after the suspension of benefits, the plan

administrator is to pay the segregated amounts (plus interest) to the persons entitled to receive them. If the plan administrator determines that the order is not a qualified order or, after the two-year period has expired, has not resolved the issue of whether the order is qualified, the segregated amounts are paid to the person or persons who would have received the amounts if the order had not been issued.

Any determination that an order is qualified after expiration of the two-year period is to be applied prospectively. Thus, if the plan administrator determines that the order is qualified after the two-year period, the plan is not liable for payments to the alternate payee for the period before the order is determined to be qualified.

Of course, the provisions of the bill do not affect any cause of action that an alternate payee may have against the participant. For example, if an order is determined to be qualified after the two-year period, the alternate payee may have a cause of action under State law against the participant for amounts paid to the participant that should have been paid to the alternate payee.

During any period in which the alternate payee cannot be located, the plan is not permitted to provide for the forfeiture of the amounts that should have been paid unless the plan provides for full reinstatement when the alternate payee is located.

Consultation with the Secretary of the Treasury

Under the bill, the Secretary of Labor is required to consult with the Secretary of the Treasury in prescribing regulations under these provisions.

Tax treatment of divorce distributions

The bill provides rules for determining the tax treatment of benefits subject to a qualified domestic relations order. Under the bill, net employee contributions (together with other amounts treated as the participant's investment in the contract are) apportioned between the participant and the alternate payee under regulations prescribed by the Secretary of the Treasury. The apportionment is to be made pro rata, on the basis of the present value of all benefits of the participant under the plan and the present value of all benefits of the alternate payee under the plan (as alternate payee with respect to the participant under a qualified domestic relations order).

Payments to an alternate payee before the participant attains age 59½ are not subject to the 10-percent additional income tax that would otherwise apply under certain circumstances if the participant received the amounts.

The bill provides that the interest of the alternate payee is not taken into account in determining whether a distribution to the participant is a lump sum distribution. Under the bill, benefits distributed to an alternate payee under a qualified domestic relations order can be rolled over, tax free, to an individual retirement account or to an individual retirement annuity. The usual income tax rules apply to benefits not rolled over. Accordingly, the special rules for lump sum distributions from qualified plans will not apply to benefits distributed to an alternate payee.

Effective Dates

The provisions of the bill relating to assignments in divorce, etc., proceedings generally apply on the date of enactment without regard to whether an order was issued before that date. However, if a domestic relations order was received by a plan before the date of enactment, the plan administrator is to treat the order as a qualified domestic relations order to the extent that the order is consistent with the plan. Thus, to the extent that the order provides for the payments of benefits in an amount, type, or form otherwise permitted under the plan, the plan administrator is to treat the order as a qualified domestic relations order.

D. Cash Out of Certain Accrued Benefits (Sec. 205 of the bill and sec. 411 of the Code)

Present Law

Under present law,[26] in the case of an employee whose plan participation terminates, a qualified plan may involuntarily "cash out" the benefit (*i.e.*, pay out the balance to the credit of a plan participant without the participant's consent) if the present value of the benefit does not exceed $1,750. If a benefit is cashed-out under this rule and the participant subsequently returns to employment covered by the plan, then service taken into account in computing benefits payable under the plan after the return need not include service with respect to which benefits were cashed out unless the employee "buys back" the benefit.

Generally, a cash-out distribution from a qualified plan can be rolled over, tax free, to an IRA or to another qualified plan.

Under present law, the prohibition on involuntary cash-outs of amounts in excess of $1,750 does not apply to the benefits that may be payable to a surviving or former spouse of the participant.

Reasons for Change

Your committee believes that the limit on involuntary cash-outs should be raised to $3,500 in recognition of the effects of inflation on the value of small benefits payable under a qualified pension plan.

Explanation of Provision

The bill increases the limit on cash-outs without the participant's consent to $3,500 from $1,750. In addition, for purposes of determining the present value of the benefit, the plan is required to use an interest rate assumption no greater than the rate used by the PBGC for valuing a lump sum distribution upon plan termination.

Under the bill, a cash-out of benefits to a former or surviving spouse may not be made without the spouse's consent unless the value does not exceed $3,500.

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[26] Sec. 411(a)(7)(B) of the Code.

Effective Date

The cash-out provision generally is effective for plan years beginning after December 31, 1984. In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified by the date of enactment between employee representatives and one or more employers, the provision is not effective for plan years beginning before the earlier of (1) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension agreed to after the date of enactment) or (2) January 1, 1987.

E. Notice of Forfeitability of Benefits (Sec. 206 of the bill and sec. 6057 of the Code)

Present law

Under present law, the administrator of a qualified plan is required to furnish to a plan participant a statement indicating the participant's total accrued benefits and nonforfeitable accrued benefits if the participant requests such a statement. A participant is not entitled to more than one statement during any 12-month period. In addition, present law requires a plan administrator to furnish a statement to each plan participant who (1) separates from service during a plan year, (2) is entitled to a vested deferred benefit under the plan, and (3) did not receive retirement benefits under the plan during the year. This statement must contain specified information relating to the benefit.

Reasons for Change

Your committee believes that a participant who receives a statement of accrued benefits as required under present law should be informed of any benefits that may be forfeited if the participant dies prior to a particular date so that participants may make financial arrangements for the retirement security of their spouses.

Explanation of Provision

Under the bill, any statement provided to a plan participant of total accrued benefits and nonforfeitable accrued benefits or any statement provided to a separated plan participant who has a vested deferred benefit must include a notice to the participant that certain benefits may be forfeited if the participant dies before a particular date. The notice that certain benefits may be forfeited if a participant dies before a particular date need not include the amount of the benefits that are forfeitable.

Effective Date

The provision of the bill requiring notice of forfeitability of benefits is effective for plan years beginning after December 31, 1984. In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified by the date of enactment between employee representatives and one or more employers, the provision is not effective for plan years beginning before the earlier of (1) the date on which the last of the collective bargaining agreements re-

lating to the plan terminates (determined without regard to any extension agreed to after the date of enactment) or (2) January 1, 1987.

F. Notice of Rollover Treatment (Sec. 207 of the bill and secs. 402 and 6652 of the Code)

Present Law

Under present law, an employee's benefits from or under a qualified plan generally are includible in income when the benefits are distributed. If the balance to the credit of an employee is paid to the employee or to the surviving spouse of the employee as a qualifying rollover distribution, all or any portion of the distribution may be rolled over, within 60 days of the date of the distribution, to another qualified plan or an IRA. If a rollover is made, tax is deferred on the portion of the distribution rolled over. Similar rules apply to qualifying rollover distributions from or under a tax-sheltered annuity contract.

Present law does not require a plan administrator to notify a recipient of a qualifying rollover distribution of the time for making a rollover to another qualified pension plan or an IRA or the consequences of rolling over the distribution.

Reasons for Change

Your committee is concerned that participants in qualified plans and the surviving or former spouses of participants often fail to make rollovers of qualifying rollover distributions because they do not understand the consequences of making such a rollover. In addition, your committee is aware that many individuals have failed to make permissible rollovers because they do not make the rollover within the required time period. Your committee believes that the plan administrator can, without significant administrative burden, provide this information to the person receiving the distribution.

Explanation of Provision

Under the bill, when the administrator of a qualified plan makes a qualifying rollover distribution, the administrator is to provide notice to the recipient that (1) the distribution will not be taxed currently to the extent transferred to another qualified pension plan or an IRA and (2) the transfer must be made within 60 days of receipt in order to qualify for this tax-free rollover treatment. In the case of a series of distributions that may constitute a lump sum distribution, the committee intends that this notice will explain that the 60-day period does not begin to run until the last distribution is made.

Your committee recognizes that, under certain circumstances, it may be difficult for a plan administrator to determine whether a particular distribution is a qualifying rollover distribution. Thus, your committee intends that a plan administrator satisfies the notice requirement if notice is provided with every payment from or under the plan so long as the notice, in addition to satisfying the other requirements, includes a statement describing how a recipi-

ent may determine whether the particular distribution is a qualifying rollover distribution.

Failure of the plan administrator to give the required notice of rollover treatment results in imposition of a $10 penalty for each failure up to $5,000 for each calendar year. This penalty does not apply if the failure is shown to be due to reasonable cause and not to willful neglect.

Effective Date

The notice of rollover treatment provision generally is effective for plan years beginning after December 31, 1984. In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified before the date of enactment between employee representatives and one or more employers, the provision is not effective for plan years beginning before the earlier of (1) the date on which the last of the collective bargaining agreements relating to the plan terminates (without regard to any extension agreed to after the date of enactment) or (2) January 1, 1987.

G. Cutback in Accrued Benefits (Sec. 301 of the bill)

Present Law

Under present law, a pension plan is not a qualified plan unless it is established and maintained by the employer to provide definitely determinable benefits to employees after retirement. The Internal Revenue Service takes the position that a defined benefit pension plan is not a qualified plan unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a manner that precludes employer discretion.[27]

In addition, present law provides that a qualified plan generally may not be amended in a manner that decreases the benefits of any participant accrued prior to the amendment.[28] An exception to this rule is provided for certain retroactive plan amendments. Under an IRS ruling, for purposes of determining whether a participant's accrued benefit is decreased, all of the provisions of the plan affecting directly or indirectly the accrued benefit are taken into account.[29]

Reasons for Change

Your committee believes that the IRS rulings relating to actuarial assumptions and cutbacks in accrued benefits provide important protections to plan participants and their former or surviving spouses. Therefore, the committee believes that these rulings should be codified.

Explanation of Provision

The bill codifies present law generally precluding the elimination or reduction of benefits that have already been accrued by employ-

[27] Rev. Rul. 79-90, 1979 -C.B. 155.
[28] Sec. 411(d)(6).
[29] Rev. Rul. 81-12, 1981 -C.B. 228.

ees. Although the bill prohibits the elimination or reduction of a benefit through a plan amendment that changes the basis for determining actuarial equivalency with respect to previously accrued benefits, and prohibits the elimination or reduction of an accrued early retirement benefit or optional form of benefit, it does not prevent prospective changes in benefits.

For example, consider a plan that provides an annual benefit of 1 percent of average pay per year of service at normal retirement age under the plan (age 65). The plan provides an early retirement benefit to a participant who has attained age 55. This early retirement benefit is actuarially reduced to 50 percent of the benefit payable to the participant at age 65. In the case of a participant who attains age 55 and who has completed 30 years of service, the amount of the annual benefit payable beginning at age 55 is not actuarially reduced under the plan.

Under the bill, if the plan is amended on January 1, 1985 (effective on that date), to require a full actuarial reduction of early retirement benefits in all cases, then the full actuarial reduction could be made for any participant who severs employment before attaining age 55 and completing 30 years of service. Under the bill, however, if a participant met the age and service requirements for the unreduced early retirement benefit on January 1, 1985, the plan amendment could not reduce that benefit below the level to which the participant would have been entitled if retirement had occurred immediately before the plan amendment was effective.

Under this plan, if a participant did not meet the plan's requirements for unreduced early retirement benefits on January 1, 1985, but the participant later satisfies those requirements, then the participant's accrued benefit under the plan would be the greater of (1) the accrued benefit as of the date of the plan amendment, without taking the actuarial reduction into account, or (2) the accrued benefit provided by the plan when the benefit becomes payable, after the full actuarial reduction. Accordingly, the participant's accrued benefit will not be reduced by the plan amendment but it will not be increased by subsequent service or pay raises until the subsequent increase brings the participant's accrued benefit to a level in excess of the accrued benefit as of January 1, 1985.

For example, assume that employee A was covered by the plan described above and, on January 1, 1985, was one day short of attaining age 55 and completing 30 years of service. If A's average pay immediately before the amendment was $10,000, then A's accrued benefit at that time was an annual benefit of $3,000 ($10,000×1 percent×30 years). A 50-percent actuarial reduction would reduce A's benefit payable beginning on January 1, 1985, to $1,500. Under the bill, as under prior law, the plan amendment could not reduce A's accrued benefit below $3,000.

Further, if as of January 1, 1985, employee B was age 50, had completed 25 years of service, and had average pay of $10,000, then the plan amendment could not reduce B's benefit below $2,500 ($10,000×1 percent×25 years). If B's average pay increased at 6 percent annually until age 55, then B's accrued benefit at age 55 under the plan would be $4,016 ($13,382×1 percent×30 years). But for the bill and prior law, the actuarial reduction would reduce B's annual benefit to $2,008. Under the bill, as under prior law, the

amendment could not reduce B's benefit payable at age 55 below $2,500.

If as of January 1, 1985, employee C was age 45, had completed 20 years of service, and had average pay of $10,000, and C's pay increased at 6 percent annually until age 55, then C's benefit would not be increased under the bill and prior law. C's accrued benefit as of January 1, 1985, was $2,000 ($10,000 × 1 percent × 20), and at age 55 (assuming average pay rises at 6 percent annually to $17,906) C's accrued benefit will be $5,371 ($17,906 × 1 percent × 30 years). The 50-percent actuarial reduction would reduce C's benefit to $2,685. The bill and prior law do not affect the result in C's case because the actuarial reduction does not reduce C's benefit below the protected level of $2,000.

Of course, a plan provision that takes effect upon the occurrence of a specified event (e.g., a change in the status of the plan from top heavy to non-top heavy) would be treated as a plan amendment at the time the specified event occurs. Accordingly, such a provision is not to have the effect of reducing previously accrued benefits.

The bill does not change the rules under which acrued benefits may be reduced with the consent of the Secretary of Labor, in the event of a substantial business hardship (sec. 412(c)(8) of the Code) or the rules permitting a reduction of benefits in the case of certain multiemployer plans (sec. 4281 of ERISA). Also, the committee expects that Treasury regulations will permit participants to elect to reduce accrued benefits in a defined benefit pension plan where those benefits would otherwise exceed the overall limits on contributions and benefits (sec. 415 of the Code) or cause prohibited discrimination under the plan. In addition, the committee expects that, in the case of a terminated defined benefit pension plan with insufficient assets to provide benefits, Treasury regulations will permit the reduction of benefits of key employees to the extent necessary to avoid the imposition of liability on the employer under the termination insurance program (Title IV of ERISA).

Effective Date

The codification of the rulings generally is effective for plan years beginning after December 31, 1984. In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified before the date of enactment between employee representatives and one or more employers, the codification is not effective for plan years beginning before the earlier of (1) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension agreed to after the date of enactment) or (2) January 1, 1987.

H. Study by the General Accounting Office (Sec. 304 of the bill)

The bill provides that the General Accounting Office (GAO) is to conduct a detailed study (based on a reliable scientific sample of typical pension, profit-sharing, and stock bonus plans of various designs and sizes) of the effect on women of participation, vesting, funding, integration, survivorship features, and other relevant plan and Federal pension rules. In connection with this study, the bill

provides that GAO is to have access to the records of employers maintaining pension plans and to the records of the plans.

GAO is directed under the bill to consult with the Internal Revenue Service, the Department of Labor, and other interested Federal agencies to prevent the duplication of data compilation or analyses.

The report is required to be transmitted, no later than January 1, 1990, to the House Committee on Ways and Means, the House Committee on Education and Labor, the Senate Committee on Finance, the Senate Committee on Labor and Human Resources, and the Joint Committee on Taxation.

III. BUDGET EFFECTS AND VOTE OF THE COMMITTEE

Budget Effects

In compliance with clause 7 of Rule XIII of the Rules of the House of Representatives, the following statement is made relative to the budget effects of H.R. 4280, as reported.

The revenue provisions of the bill involving statutory changes are estimated to reduce fiscal year budget receipts by $42 million in 1985, $67 million in 1986, $83 million in 1987, $90 million in 1988, and $93 million in 1989.

The Treasury Department agrees with this statement.

The following table provides detailed estimates for the tax provisions of the bill for fiscal years 1985–89.

Vote of the Committee

In compliance with clause 2(l)(2)(B) of Rule XI of the Rules of the House of Representatives, the following statement is made about the vote of your committee on the motion to report the bill, as amended. The bill, H.R. 4280, as amended, was ordered favorably reported by voice vote.

Estimated Revenue Effects of Tax Provisions of H.R. 4280, as Reported by the Committee on Ways and Means, Fiscal Years, 1985–89

[In millions of dollars]

Provision	1985	1986	1987	1988	1989
A. Crediting periods of service:					
1. Lower maximum participation age in pension plans to 21 years	−34	−59	−75	−82	−85
2. Years of service after age 18 counted for vesting under pension plans	(1)	(1)	(1)	(1)	(1)
3. Rule of parity applied only if break in service exceeds 5 years	(2)	(2)	(2)	(2)	(2)
4. Maternity or paternity leave not treated as break in service	(3)	(3)	(3)	(3)	(3)
B. Joint and survivor annuity and preretirement survivor benefits	(4)	(4)	(4)	(4)	(4)
C. Distributions of benefits upon divorce	(3)	(3)	(3)	(3)	(3)
D. Involuntary cash-outs	(5)	(5)	(5)	(5)	(5)
E. Cutback in accrued benefits					
Total, tax provisions [6]	−42	−67	−83	−90	−93

[1] Loss of less than $10,000,000.
[2] Negligible loss.
[3] Loss of less than $5,000,000.
[4] Gain of less than $5,000,000.
[5] Negligible gain.
[6] For the purpose of arriving at totals, estimates appearing as footnotes are assigned the following values: negligible equals zero; loss of less than $5,000,000 equals −$3,000,000; loss of less than $10,000,000 equals −$5,000,000; gain of less than $5,000,000 equals $3,000,000.

IV. OTHER MATTERS TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clause 3(l)(3) and 2(l)(4) of Rule XI of the Rules of the House of Representatives, the following statements are made with respect to your committee's action on H.R. 4280, as amended.

Oversight Findings

With respect to subdivision (A) of clause 2(l)(3) (relating to oversight findings), the committee advises that it was as a result of the committee's oversight activities with respect to rules of the Internal Revenue Code relating to pension, profit-sharing and stock bonus plans that the committee concluded that it is appropriate to enact the provisions contained in the bill.

The Committee on Ways and Means held hearings on the subject of retirement equity on October 25–26, 1983. The bill H.R. 4280 was referred jointly to the Committee on Education and Labor and the Committee on Ways and Means. The Committee on Education and Labor reported the bill, as amended, on April 5, 1984 (H. Rpt. No. 98–655, Part I).

New Budget Authority and Tax Expenditures

With respect to subdivision (B) of clause (2)(l)(3), after consultation with the Director of the Congressional Budget Office, your committee states that the changes made to existing law by this bill, as amended, involve no new budget authority. The changes will involve increased tax expenditures equal to the revenue losses for fiscal years 1985–89 shown in the table above (in Part III) of this report.

Consultation With Congressional Budget Office on Budget Estimates

With respect to subdivision (C) of clause 2(l)(3), your committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates (as indicated in part III of this report) and submitted the following statement:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., April 4, 1984.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with Section 403 of the Congressional Budget Act, the Congressional Budget Office has exam-

ined H.R. 4280, the Retirement Equity Act of 1984, as ordered reported by the Committee. H.R. 4280 is intended to improve benefit protection and provide for greater equity in private pension plans for workers and their spouses and dependents. The provisions of the bill, as amended by the Committee, address issues related to the crediting of periods of service under qualified pension plans, providing of survivor benefits to the spouses of participants under pension plans, and modifying and clarifying federal tax and labor law rules with respect to certain distributions from qualified pension plans pursuant to state domestic relations orders.

CBO has reviewed and concurs with estimates of the revenue effect of H.R. 4280 prepared by the staff of the Joint Committee on Taxation. The bill would increase tax expenditures and reduce fiscal year revenues by $42 million in 1985, $67 million in 1986, $83 million in 1987, $90 million in 1988, and $93 million in 1989.

Should the committee so desire, we would be pleased to provide further details on this estimate.

With best wishes.

Sincerely,

RUDOLPH G. PENNER.

Oversight by Committee on Government Operations

With respect to subdivision (D) of clause 2(l)(3), your committee advises that no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations regarding the subject matter of this bill.

Inflationary Impact

In compliance with clause 2(l)(4), your committee states that the enactment of this bill is not expected to have an inflationary impact on prices and costs in the operation of the national economy.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Employee Retirement Income Security Act of 1974

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TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

* * * * * * *

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SUBTITLE B—REGULATORY PROVISIONS

PART 1—REPORTING AND DISCLOSURE

* * * * * * *

REPORTING OF PARTICIPANT'S BENEFIT RIGHTS

SEC. 105. (a) Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information—

(1) the total benefits accrued, and

(2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) during any one 12 month period.

(c) Each administrator required to register under section 6057 of the Internal Revenue Code of 1954 shall, before the expiration of the time prescribed for such registration, furnish to each participant described in subsection (a)(2)(C) of such section, an individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by section 6057(a)(2) of such Code. *Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.*

* * * * * * *

PART 2—PARTICIPATION AND VESTING

* * * * * * *

MINIMUM PARTICIPATION STANDARDS

SEC. 202. (a)(1)(A) No pension plan may require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

(i) the date on which the employee attains the age of [25] *21;* or

(ii) the date on which he completes 1 year of service.

(B)(i) In the case of any plan which provides that after not more than 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "3 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational instutition (as defined in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1954) by an employer which is exempt from tax under section 501(a) of such Code, which provides that each participant having at least 1 year of service has a right to 100 percent of his accured benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subpara-

graph (A) shall be applied by substituting [“30” for “25”.] *“26” for 21”*. This clause shall not apply to any plan to which clause (i) applies.

* * * * * * *

(b)(1) Except as otherwise provided in paragraphs (2), (3), and (4), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of subsection (a)(1).

(2) In the case of any employee who has any 1-year break in service (as defined in section 203(b)(3)(A)) under the plan to which the service requirements of clause (i) of subsection (a)(1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(3) In computing an employee's period of service for purposes of subsection (a)(1) in the case of any participant who has any 1-year break in service (as defined in section 203(b)(3)(A)), service beforesuch break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in subsection (a)(3)) after his return.

[(4) In the case of an employee who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a)(1) if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service beforesuch break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this paragraph by reason of any prior break in service.]

(4)(A) For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account in computing the period of service if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(i) 5, or

(ii) the aggregated number of years of service before such period.

(B) If any years of service are not required to be taken into account by reason of a period of breaks in service to which subparagraph (A) applies, such years of service shall not be taken into account in applying subparagraph (A) to a subsequent period of breaks in service.

(C) For purposes of subparagraph (A), the term “nonvested participant” means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(5)(A) In the case of each individual who is absent from work for any period—

(i) by reason of the pregnancy of the individual,

(ii) by reason of the birth of a child of the individual,

(iii) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(iv) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this subsection whether a 1-year break in service (as defined in section 203(b)(3)(A)) has occurred, the hours described in subparagraph (B).

(B) The hours described in this subparagraph are—

(i) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(ii) in any case in which the plan is unable to determine the hours described in clause (i), 8 hours of service per day of such absence,

except that the total number of hours treated as hours of service under this subparagraph by reason of any such pregnancy or placement shall not exceed 501 hours.

(C) The hours described in subparagraph (B) shall be treated as hours of service as provided in this paragraph—

(i) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because periods of absence are treated as hours of service as provided in subparagraph (A); or

(ii) in any other case, in the immediately following year.

(D) For purposes of this paragraph, the term "year" means the period used in computations pursuant to section 203(b)(2).

(E) A plan may provide that no credit will be given pursuant to this paragraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(i) that the absence from work is for reasons referred to in subparagraph (A), and

(ii) the number of days for which there was such an absence.

MINIMUM VESTING STANDARDS

SEC. 203. (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

* * * * * * *

(b)(1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age [22] *18*, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of subsection (a)(2), the plan may not disregard any such year of service during which the employee was a participant;

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by the Secretary of the Treasury;

(D) service not required to be taken into account under paragraph (3);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

(F) years of service before this part first applies to the plan if such service would have been disregarded under the rules of the plan with regard to breaks in service, as in effect on the applicable date; and

(G) in the case of a multiemployer plan, years of service—

(i) with an employer after—

(I) a complete withdrawal of such employer from the plan (within the meaning of section 4203), or

(II) to the extent permitted by regulations prescribed by the Secretary of the Treasury, a partial withdrawal described in section 4205(b)(2)(A)(i) in connection with the decertification of the collective bargaining representative; and

(ii) with any employer the plan after the termination date of the plan under section 4048.

(2)(A) For purposes of this section, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has completed 1,000 hours of service.

(B) For purpose of this section, the term "hour of service" has the meaning provided by section 202(a)(3)(C).

(C) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as determined under regulations of the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(3)(A) For purposes of this paragraph, the term "1-year break in service" means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has not completed more than 500 hours of service.

(B) for purposes of paragraph (1), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) For purposes of paragraph (1), in the case of any participant in an individual account plan or an insured defined bene-

fit plan which satisfies the requirements of subsection 204(b)(1)(F) who has [any 1-year break in service,] *5 consecutive 1-year breaks in service,* years of service after [such break] *such 5-year period* shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before [such break.] *such 5-year period.*

[(D) For purposes of paragraph (1), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.]

(D)(i) For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) For purposes of clause (i), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E)(i) In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).

(ii) The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of absence,

except that the total number of hours treated as hours of service under this clause by reason of such pregnancy or placement shall not exceed 501 hours.

(iii) The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because periods of absence are treated as hours of service as provided in clause (i); or

(II) in any othe case, in the immediately following year.

(iv) For purposes of this subparagraph, the term "year" means the period used in computations pursuant to paragraph (2).

(v) A plan my provide that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

* * * * * * *

(e)(1) if the present vlaue of any accrued benefit exceeds $3,500, such benefit shall not be treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant.

(2) For purposes of paragraph (1), the present value shall be calculated by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan terminations.

* * * * * * *

BENEFIT ACCRUAL REQUIREMENTS

SEC. 204. (a) Each pension plan shall satisfy the requirements of subsection (b)(2), and in the case of a defined benefit plan shall also satisfy the requirements of subsection (b)(1).

(b)(1)(A) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled at the normal retirement age if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of

this suparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) A defined benefit plan satisfies the requirements of this paragraph of a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accure the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purpose of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accured benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to the date of the enactment of this Act, or

(ii) an accrued benefits which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), (C) applied with respect to such years of participation.

(E) Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "years of service" has the meaning provided by section 202(a)(3)(A).

(F) Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan—

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of paragraphs (2) and (3) of section 301(b) (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 301(b) were satisfied.

(G) Notwithstanding the preceding subparagraphs a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before benefits payable under title II of the Social Security Act which benefits under the plan—

(i) do not exceed social security benefits, and

(ii) terminate when such social security benefits commence.

(2) A plan satisfies the requirements of this paragraph if—

(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(3)(A) For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 202(b), *determined without regard to section 202(b)(5))* as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

* * * * * * *

(d) Notwithstanding section 203(b)(1), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(1) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than [$1,750] *$3,500*) permitted under regulations prescribed by the Secretary of the Treasury, or

(2) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Paragraph (1) shall apply only if such distribution was made on termination of the employee's participation in the plan. Paragraph (2) shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary of the Treasury.

* * * * * * *

[(g) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 302(c)(8).]

(g)(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 302(c)(8).

(2) For purposes of paragraph (1), a plan amendment which has the effect of—

(A) eliminating or reducing a subsidy or an early retirement benefit, or

(B) eliminating an optional form of benefit,

with respect to benefits accrued before the amendment shall be treated as reducing accrued benefits. In the case of a terminated plan, the preceding sentence shall not apply to a subsidy where the conditions for the subsidy have not been satisfied at the time of termination.

* * * * * * *

[JOINT AND SURVIVOR ANNUITY REQUIREMENT

[Sec. 205. (a) If a pension plan provides for the payment of benefits in the form of an annuity, such plan shall provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

[(b) In the case of a plan which provides for the payment of benefits before the normal retirement age as defined in section 3(24), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

[(1) the date the employee reaches the earliest retirement age, or

[(2) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

[(c)(1) A plan described in subsection (b) does not meet the requirements of subsection (a) unless, under the plan, a participant has a reasonable period in which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subsection (b) ends and

ending on the date on which he reaches normal retirement age if he continues his employment during that period.

[(2) A plan does not meet the requirements of this subsection unless in the case of such election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he had made an election under this subsection immediately prior to his retirement and if his retirement had occurred on the date immediately preceding the date of his death and within the period within which an election can be made.

[(d) A plan shall not be treated as not satisfying the requirements of this section solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election has been made under subsection (c)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

[(e) A plan shall not be treated as satisfying the requirements of this section unless, under the plan, each participant has a reasonable period (as prescribed by the Secretary of the Treasury by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subsection) not to take such joint and survivor annuity.

[(f) A plan shall not be treated as not satisfying the requirements of this section solely because, under the plan there is a provision that any election under subsection (c) or (e), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

[(1) the participant dies from accidental causes,

[(2) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

[(3) such election or revocation is made before such accident occurred.

[(g) For purposes of this section:

[(1) The term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability).

[(2) The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

[(3) The term "qualified joint and survivor annuity" means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single annuity for the life of the participant.

[(h) For the purposes of this section, a plan may take into account in any equitable fashion (as determined by the Secretary of the Treasury) any increased costs resulting from providing joint and survivor annuity benefits under an election made under subsection (c).

[(i) This section shall apply only if—

[(1) the annuity starting date did not occur before the effective date of this section, and

[(2) the participant was an active participant in the plan on or after such effective date.]

REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY

SEC. 205. (a) Each pension plan to which this section applies shall provide that—

(1) in the case of a vested participant who retires under the plan, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

(b) This section shall apply to—

(1) any defined benefit plan,

(2) any individual account plan which is subject to the funding standards of section 302, and

(3) any participant under any other individual account plan unless—

(A) such plan provides ~~that the~~ participant's nonforfeitable accured benefit is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under subsection (c)(2)(A), to a designated beneficiary),

(B) such participant does not elect the payment of benefits in the form of a life annuity, and

(C) with respect to such participant, such plan is not a transferee of a plan which is described in paragraph (1) or (2) or to which this subparagraph applied with respect to the participant.

(c)(1) A plan meets the requirements of this section only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both), and

(ii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2) and (3).

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A) the spouse of the participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) the participant establishes to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3) Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary may prescribe), a written explanation of—

(A) the terms and conditions of the qualified joint and survivor annuity,

(B) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(C) the rights of the participant's spouse under paragraph (2), and

(D) the right to make, and the effect of, a revocation of an election under paragraph (1).

(4)(A) The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if the plan fully subsidizes the costs of such benefit.

(B) For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(5) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2), shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such act.

(6) For purposes of this subsection, the term "applicable election period" means—

(A) in case of an election to waive the qualified joint and survivor annuity form of benefit the 90-day ending on the annuity starting date or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(d) For purposes of this section, the term 'qualified joint and survivor annuity' means an annuity—

(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(e) For purposes of this section, the term "qualified preretirement survivor annuity" means a survivor annuity for the life of the surviving spouse of the participant if—

(1) the payments to the surviving spouse under such annuity are the same as (or the actuarial equivalent of) the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan if—

(A) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(B) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(i) separated from service on the date of death,

(ii) survived to the earliest retirement age,

(iii) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(iv) died on the day after the day on which such participant would have attained the earliest retirement age, and

(2) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

(f)(1) Except as provided in paragraph (2), a plan may provide that a qualified joint and survivor annuity (or a qulified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(g)(1)(A) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed $3,500. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(B) Except as provided in subparagraph (C), any distribution under subparagraph (A) shall be made—

(i) directly to an eligible retirement plan (within the meaning of section 402(a)(5)(D)(iv) of the Internal Revenue Code of 1954) which is designated in writing by the participant or the surviving spouse and which is demonstrated to the satisfaction of the plan administrator to be such a plan which is willing to accept such distribution, or

(ii) if the participant or the surviving spouse does not make such a designation and in writing requests payment in a manner and to an extent permitted by the plan, in the manner and to the extent so requested.

(C) If the participant or the surviving spouse makes no designation or request referred to in subparagraph (B) within the 60-day period following notice of the distribution, the plan may make such distribution in cash.

(2) If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $3,500, and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan my immediately distribute the present value of such annuity.

(3) For purposes of paragraphs (1) and (2), the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall be determined as of the date of the distribution and by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

(h) For purposes of this section—

(1) the term "vested participant" means any participant who has a nonforfeitable right (within the meaning of section 3(19)) to any portion of the accrued benefit derived from employer contributions,

(2) the term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason or retirement or disability), and

(3) the term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(i) A plan many take into account in any equitable manner (as determined by the Secretary) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(j) In prescribing regulations under this section, the Secretary of the Treasury shall consult with the Secretary of Labor.

OTHER PROVISIONS RELATING TO FORM AND PAYMENT OF BENEFITS

SEC. 206. (a) * * *

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OTHER PROVISIONS RELATING TO FORM AND PAYMENT OF BENEFITS

(d)(1) Each pension plan shall provide that benefits provided under the plan may not be asssigned or alienated.

(2) For the purpose of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before the date of enactment of this Act. the preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a particular or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accured non-forfeitable benefit and is exempt from the tax imposed by section 4975 of the Internal Revenue Code of 1954 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of such Code.

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term 'qualified domestic relations order' means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term domestic relations order means any judgment, decree, or order (including approval of a property settlement agreement) which—

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, or child of a participant, and

(II) is made to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

(i) the name and the mailing address (if available) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order—

(i) does not require a plan to provide any benefits which are not otherwise available under the plan,

(ii) does not require a plan to make payment of benefits in a form other than the form in which such benefits would otherwise be payable under the plan,

(iii) does not require a plan to honor an election which may not otherwise be made under such plan,

(iv) does not require the payment of benefits to an alternate payee specified in the order to the extent that such benefits have been provided to another alternate payee under a previous qualified domestic relations order.

(v) does not require, in any case in which the participant survives until the date on which the payment to an alternate payee commences, the payment to such alternate payee of benefits the total actuarial present value of which (as of the date on which such payment commences), together with the total actuarial present value (as of such date) of all remaining benefits provided under the plan with respect to the participant, is greater than the total actuarial present value (as of such date) of the benefits which would be provided under the plan with respect to the participant if such order had not been issued, and

(vi) does not require, in any case in which the participant does not survive until the date on which the payment to an alternate payee commences, the payment to such alternate payee of benefits the total actuarial present value of which (as of the date on which such payment commences), together with the total actuarial present value (as of such date) of all remaining benefits provided under the plan with respect to the participant, is greater than the total actuarial present value (as of such date) of the survivor benefits which would be provided under the plan with respect to the participant if such order had not been issued and if payment of such survivor benefits commenced on such date.

(E) A domestic relations order shall not be treated as failing to meet the requirements of clauses (i) through (iii) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee—

(i) on or after the date on which the participant attains (or would have attained) the earliest retirement age (within the meaning of section 205(h)(3)),

(ii) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only benefits actually accrued), and

(iii) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint

and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

(F) To the extent provided in any qualified domestic relations order—

(i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 205, and

(ii) if married for at least 1 year, the former spouse shall be treated as meeting the requirements of section 205(f).

(G)(i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and any other alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures—

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

(H)(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall segregate in a separate account in the plan or in an escrow account the amounts which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within 2 years the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (plus any interest thereon) to the person or persons entitled thereto.

(iii) If within 2 years—

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (plus any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the 2-year period shall be applied prospectively only.

(I) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H), then the plan's obligation to the participant and each alternate payee shall be discharged to the extent of any payment made pursuant to such act.

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this Act a beneficiary under the plan. Nothing in the preceding sentence shall permit a requirement under section 4001 of the payment of more than 1 premium with respect to a participant for any period.

(K) The term "alternate payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(L) In prescribing regulations under this paragraph, the Secretary shall consult with the Secretary of the Treasury.

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PART 5—ADMINISTRATION AND ENFORCEMENT

CRIMINAL PENALTIES

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EFFECT ON OTHER LAWS

SEC. 514. (a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occured, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section 4(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 506 of this Act.

Subsection (a) shall not apply to any generally applicable criminal law of a State.

(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Act (Haw. Rev. Stat. §§ 393–1 through 393–51).

(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)—

(i) any State tax law relating to employee benefit plans, or

(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974 to the extent it provides for more than the effective administration of such Act as in effect on such date.

(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after the date of the enactment of this paragraph), but the Secretary may enter into cooperative arrangements under this paragraph and section 506 with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts.

(6)(A) Nothwithstanding any other provision of this section—

(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and if fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides—

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

(II) provisions to enforce such standards, and

(ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

(B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii) individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement of class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 3(l) and section 4 necessary to be considered an employee welfare benefit plan to which this title applies.

(C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this title apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or program participating in, subscribing to, or otherwise using a multiple employer werlfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

(7) Subsection (a) shall not apply to qualified domestic relations orders (within the meaning of section 206(d)(3)(B)(i)).

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INTERNAL REVENUE CODE OF 1954

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Subtitle A—Income Taxes

CHAPTER 1—NORMAL TAXES AND SURTAXES

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Subchapter B—Computation of Taxable Income

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PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

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SEC. 72. ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.

(a) GENERAL RULE FOR ANNUITIES.—Except as otherwise provided in this chapter, gross income includes any amount received as an annuity (whether for a period certain or during one or more lives) under an annuity, endowment, or life insurance contract.

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(m) SPECIAL RULES APPLICABLE TO EMPLOYEE ANNUITIES AND DISTRIBUTIONS UNDER EMPLOYEES PLANS.—

(2) COMPUTATION OF CONSIDERATION PAID BY THE EMPLOYEE.—In computing—

(A) the aggregate amount of premiums or other consideration paid for the contract for purposes of subsection (c)(1)(A) (relating to the investment in the contract),

(B) the consideration for the contract contributed by the employee for purposes of subsection (d)(1) (relating to employees' contributions recoverable in 3 years), and

(C) the aggregate premiums or other consideration paid for purposes of subsection (e)(1)(B) (relating to certain amounts not received as an annuity),

any amount allowed as a deduction with respect to the contract under section 404 which was paid while the employee was an em-

ployee within the meaning of section 401(c)(1) shall be treated as consideration contributed by the employer, and there shall not be taken into account any portion of the premiums or other consideration for the contract paid while the employee was an owner-employee which is properly allocable (as determined under regulations prescribed by the secretary) to the cost of life, accident, health, or other insurance.

(3) LIFE INSURANCE CONTRACTS.—

(A) This paragraph shall apply to any life insurance contract—

(i) purchased as a part of a plan described in section 403(a), or

(ii) purchased by a trust described in section (401(a) which is exempt from tax under section 501(a) if the proceeds of such contract are payable directly or indirectly to a participant in such trust or to a beneficiary of such participant.

(B) Any contribution to a plan described in subparagraph (A)(i) or a trust described in subparagraph (A)(ii) which is allowed as a deduction under section 404, and any income of a trust described in subparagraph (A)(ii), which is determined in accordance with regulations prescribed by the secretary to have been applied to purchase the life insurance protection under a contract described in subparagraph (A), is includible in the gross income of the participant for the taxable year when so applied.

(C) In the case of the death of an individual insured under a contract described in subparagraph (A), an amount equal to the cash surrender value of the contract immediately before the death of the insured shall be treated as a payment under such plan or a distribution by such trust, and the excess of the amount payable by reason of the death of the insured over such cash surrender value shall not be includible in gross income under this section and shall be treated as provided in section 101.

(5) PENALTIES APPLICABLE TO CERTAIN AMOUNTS RECEIVED BY OWNER-EMPLOYEES.—

(A) This paragraph shall apply—

(i) to amounts (other than any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution) which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) and which are received by an individual, who is, or has been, a key employee, before such individual attains the age of 59½ years, for any reason other than the individual's becoming disabled (within the meaning of paragraph (7) of this subsection), but only to the extent that such amounts are attributable to contributions paid on behalf of such individual (other than contributions made by him as an owner-employee) while he was a key employee in a top-heavy plan, and

(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, a key employee, or by the successor of such individual, but only to the extent that such amounts are determined, under regulations prescribed by the Secretary, to exceed the benefits provided for such individual under the plan formula.

(B) If a person receives an amount to which this paragraph applies, his tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 10 percent of the portion of the amount so received which is includible in his gross income for such taxable year.

(C) For purposes of this paragraph, the terms "key employee" and "top-heavy plan" have the same meaning as when used in section 416.

(6) OWNER-EMPLOYEE DEFINED—For purposes of this subsection, the term "owner-employee" has the meaning assigned to it by section 401(c)(3) and includes an individual for whose benefit an individual retirement account or annuity described in section 408(a) or (b) is maintained. For purposes of the preceding sentence, the term "owner-employee" shall include an employee within the meaning of section 401(c)(1).

(7) MEANING OF DISABLED.—For purposes of this section, an individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary may require.

(9) RETURN OF EXCESS CONTRIBUTIONS BEFORE DUE DATE OF RETURN.—

(A) IN GENERAL.—If an excess contribution is distributed in a qualified distribution—

(i) such distribution of such excess contribution shall not be included in gross income, and

(ii) this section (other than this paragraph) shall be applied as if such excess contribution and such distribution had not been made.

(B) EXCESS CONTRIBUTION.—For purposes of this paragraph, the term "excess contribution" means any contribution to a qualified trust described in section 401(a) or under a plan described in section 403(a) or 405(a) made on behalf of an employee (within the meaning of section 401(c)) for any taxable year to the extent such contribution exceeds the amount allowable as a deduction under section 404(a).

(C) QUALIFIED DISTRIBUTION.—The term "qualified distribution" means any distribution of an excess contribution which meets requirements similar to the requirements of subparagraphs (A), (B), and (C) of section 408(d)(4). In the

case of such distribution, the rules of the last sentence of section 408(d)(4) shall apply.

(10) DETERMINATION OF INVESTMENT IN THE CONTRACT IN THE CASE OF QUALIFIED DOMESTIC RELATIONS ORDERS.—Under regulations prescribed by the Secretary, in the case of a distribution or payment made to an alternate payee pursuant to a qualified domestic relations order (as defined in section 414(o)), the investment in the contract as of the date prescribed in such regulations shall be allocated on a pro rata basis between the present value of such distribution or payment and the present value of all other benefits payable with respect to the participant to which such order relates.

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Subchapter D—Deferred Compensation, Etc.

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PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

Subpart A—General Rule

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SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) * * *

* * * * * * *

[(11)(A) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for the payment of benefits in the form of annuity unless such plan provides for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

[(B) Notwithstanding the provisions of subparagraph (A), in the case of a plan which provides for the payment of benefits before the normal retirement age (as defined in section 411(a)(8)), the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

[(i) the date the employee reaches the earliest retirement age under the plan, or

[(ii) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

[(C) A plan described in subparagraph (B) does not meet the requirements of subparagraph (A) unless, under the plan, a

participant has a reasonable period during which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subparagraph (B) ends and ending on the date on which he reaches normal retirement age (as defined in section 411(a)(8)) if he continues his employment during that period. A plan does not meet the requirements of this subparagraph unless, in the case of such an election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he made an election described in this subparagraph immediately prior to his retirement and if his retirement had occurred on the day before his death and within the period within which an election can be made.

[(D) A plan shall not be treated as not satisfying the requirements of this paragraph solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election described in subparagraph (C) has been made under subparagraph (C)) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

[(E) A plan shall not be treated as satisfying the requirements of this paragraph unless, under the plan, each participant has a reasonable period (as described by the Secretary by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subparagraph) not to take such joint and survivor annuity.

[(F) A plan shall not be treated as not satisfying the requirements of this paragraph solely because under the plan there is a provision that any election described in subparagraph (C) or (E), and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

[(i) the participant dies from accidental causes,

[(ii) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

[(iii) such election or revocation is made before such accident occurred.

[(G) For purposes of this paragraph—

[(i) the term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason or retirement of by reason of disability),

[(ii) the term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits, and

[(iii) the term "qualified joint and survivor annuity" means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single life annuity for the life of the participant.

For purposes of this paragraph, a plan may take into account in any equitable manner (as determined by the Secretary) any increased cost resulting from providing joint and survivor annuity benefits.

[(H) This paragraph shall apply only if—

[(i) the annuity starting date did not occur before the effective date of this paragraph, and

[(ii) the participant was an active participant in the plan on or after such effective date.]

(11) REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY.—

(A) IN GENERAL.—In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

(i) in the case of a vested participant who retires under the plan, the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

(B) Plans to which paragraph applies.—This paragraph shall apply to—

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless—

(I) such plan provides that the participant's nonforfeitable accrued benefit is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2)(A), to a designated beneficiary),

(II) such participant does not elect a payment of benefits in the form of a life annuity, and

(III) with respect to such participant, such plan is not a direct or indirect transferee of a plan which is described in clause (i) or (ii) or to which this clause applied with respect to the participant.

(C) CROSS REFERENCE.—For—

(i) provisions under which participants may elect to waive the requirements of this paragraph, and

(ii) other definitions and special rules for purposes of this paragraph,
see section 417.

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

[(13) A trust]

(13) ASSIGNMENT AND ALIENATION.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

(B) SPECIAL RULES FOR DOMESTIC RELATIONS ORDERS.—Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

* * * * * * *

(25) REQUIREMENT THAT ACTUARIAL ASSUMPTIONS BE SPECIFIED.—A defined benefit pension plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

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SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

(a) TAXABILITY OF BENEFICIARY OF EXEMPT TRUST.—

(1) GENERAL RULE.—Except as provided in paragraphs (2) and (4), the amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to him, in the year in which so distributed, under section 72 (relating to annuities). The amount actually distributed to any distributee shall not include net unrealized appreciation in securities of the employer corporation attributable to the amount contributed by the employee (other than deductible employee contributions within the meaning of section 72(o)(5)). Such net unrealized appreciation and the resulting adjustment to basis of such securities shall be determined in accordance with regulations prescribed by the Secretary.

* * * * * * *

(5) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—If—

(i) the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution,

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) MAXIMUM AMOUNT WHICH MAY BE ROLLED OVER.—In the case of any qualifying rollover distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the fair market value of all the property the employee receives in the distribution, reduced by the employee contributions (other than accumulated deductible employee contributions within the meaning of section 72(o)(5)).

(C) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Subparagraph (A) shall not apply to any transfer of a distribution made after the 60th day following the day on which the employee received the property distributed.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) QUALIFYING ROLLOVER DISTRIBUTION.—The term "qualifying rollover distribution" means 1 or more distributions—

(I) within 1 taxable year of the employee on account of a termination of the plan of which the trust is a part or, in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan,

(II) which constitute a lump sum distribution within the meaning of subsection (e)(4)(A) (determined without reference to subparagraphs (B) and (H) of subsection (e)(4)), or

(III) which constitute a distribution of accumulated deductible employee contributions (within the meaning of section 72(o)(5)).

(ii) EMPLOYEE CONTRIBUTIONS.—The term "employee contributions" means—

(I) the excess of the amounts considered contributed by the employee (determined by applying section 72(f)), over

(II) any amounts theretofore distributed to the employee which were not includible in gross income.

(iii) QUALIFIED TRUST.—The term "qualified trust" means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(iv) ELIGIBLE RETIREMENT PLAN.—The term "eligible retirement plan" means—

(I) an individual retirement account described in section 408(a),

(II) an individual retirement annuity described in section 408(b) (other than an endowment contract),

(III) a retirement bond described in section 409,

(IV) a qualified trust, and

(V) an annuity plan described in section 403(a).

(v) ROLLOVER OF PARTIAL DISTRIBUTIONS OF DEDUCTIBLE EMPLOYEE CONTRIBUTIONS PERMITTED.—In the case of any qualifying rollover distribution described in subclause (III) of clause (i), clause (i) of subparagraph (A) shall be applied by substituting "any portion of the balance" for "the balance".

(E) SPECIAL RULES.—

(i) TRANSFER TREATED AS ROLLOVER CONTRIBUTION UNDER SECTION 408.—For purposes of this title, a transfer described in subparagraph (A) to an eligible retirement plan described in subclause (I), (II), or (III) of subparagraph (D)(iv) shall be treated as a rollover contribution described in section 408(d)(3).

(ii) SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—An eligible retirement plan described in subclause (IV) or (V) of subparagraph (D)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.

(6) SPECIAL ROLLOVER RULES.—

(A) TIME OF TERMINATION.—For purposes of paragraph (5)(D)(i), a complete discontinuance of contributions under a profit-sharing or stock bonus plan shall be deemed to occur on the day the plan administrator notifies the Secretary (in accordance with regulations prescribed by the Secretary) that all contributions to the plan have been completely discontinued. For purposes of section 411 (d)(3), the

plan shall be considered to be terminated no later than the day such notice is filed with the Secretary.

(B). SALE OF SUBSIDIARY OR ASSETS.—For purposes of paragraph (5)(D)(i)—

(i) A payment of the balance to the credit of an employee of a corporation (hereinafter referred to as the employer corporation) which is a subsidiary corporation (within the meaning of section 425(f)) or which is a member of a controlled group of corporations (within the meaning of section 1563(a), determined by substituting "50 percent" for "80 percent" each place it appears therein) in connection with the liquidation, sale, or other means of terminating the parent-subsidiary or controlled group relationship of the employer corporation with the parent, corporation, or controlled group, or

(ii) a payment of the balance to the credit of an employee of a corporation (hereinafter referred to as the acquiring corporation) in connection with the sale or other transfer to the acquiring corporation of all or substantially all of the assets used by the previous employer of the employee (hereinafter referred to as the selling corporation) in a trade or business conducted by the selling corporation

shall be treated as a payment or distribution on account of the termination of the plan with respect to such employee if the employees of the employer corporation or the acquiring corporation (whichever applies) are not active participants in such plan at the time of such payment or distribution. For purposes of this subparagraph, in no event shall a payment or distribution be deemed to be in connection with a sale or other transfer of assets, or a liquidation, sale, or other means of terminating such parent-subsidiary or controlled group relationship, if such payment or distribution is made later than the end of the second calendar year after the calender year in which occurs such sale or other transfer of assets, or such liquidation, sale, or other means of terminating such parent-subsidiary or controlled group relationship.

(C) TREATMENT OF PORTION NOT ROLLED OVER.—If any portion of a lump sum distribution is transferred in a transfer to which paragraph (5)(A) applies, paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e) shall not apply with respect to such lump sum distribution.

(D) SALES OF DISTRIBUTED PROPERTY.—For purposes of subparagraphs (5) and (7)—

(i) TRANSFER OF PROCEEDS FROM SALE OF DISTRIBUTED PROPERTY TREATED AS TRANSFER OF DISTRIBUTED PROPERTY.—The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distriution.

(ii) PROCEEDS ATTRIBUTABLE TO INCREASE IN VALUE.—The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

(iii) DESIGNATION WHERE AMOUNT OF DISTRIBUTION EXCEEDS ROLLOVER CONTRIBUTION.—In any case where part or all of the distribution consists of property other than money, the taxpayer may designate—

(I) the portion of the money or other property which is to be treated as attributable to employee contributions, and

(II) the portion of the money or other property which is to be treated as included in the rollover contribution.

Any designation under this clause for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

(iv) TREATMENT WHERE NO DESIGNATION.—In any case where part or all of the distribution consists of property other than money and the taxpayer fails to make a designation under clause (iii) within the time provided therein, then—

(I) the portion of the money or other property which is to be treated as attributable to employee contributions, and

(II) the portion of the money or other property which is to be treated as included in the rollover contribution

shall be determined on a ratable basis.

(v) NONRECOGNITION OF GAIN OR LOSS.—In the case of any sale described in clause (i), to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (5)(B) or (7)(B) (as the case may be), neither gain nor loss on such sale shall be recognized.

(E) SPECIAL RULE WHERE EMPLOYER MAINTAINS MONEY PURCHASE PENSION PLAN AND OTHER PENSION PLAN.—

(i) IN GENERAL.—In the case of any distribution from a money purchase pension plan which is maintained by an employer, for purposes of paragraph (5)(D)(i)(II), subsection (e)(4)(C) shall be applied by not taking into account any pension plan maintained by such employer which is not a money purchase pension plan. The preceding sentence shall not apply to any distribution which is a qualifying rollover distribution without regard to this subparagraph.

(ii) TREATMENT OF SUBSEQUENT DISTRIBUTIONS.—If—

(I) any distribution of the balance to the credit of an employee from a money purchase pension plan maintained by an employer is treated as a qualifying rollover distribution by reason of clause (i), and

(II) any portion of such distribution is transferred in a transfer to which paragraph (5)(A) applies,

then paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e), shall not apply to any distribution (after the taxable year in which the distribution described in subparagraph (A) of paragraph (A) of paragraph (5) is made) of the balance to the credit of such employee from any other pension plan maintained by such employer.

(F) QUALIFIED DOMESTIC RELATIONS ORDERS.—If—

(i) within 1 taxable year of the recipient, the balance to the credit of the recipient by reason of any qualified domestic relations order (within the meaning of section 414(o)) is distributed or paid to the recipient,

(ii) the recipient transfers any portion of the property the recipient receives in such distributions to an eligible retirement plan described in subclause (I) or (II) of paragraph (5)(D)(iv), and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

Then the portion of the distribution so transferred shall be treated as a distribution described in paragraph (5)(A).

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(e) TAX ON LUMP SUM DISTRIBUTIONS.—

(1) IMPOSITION OF SEPARATE TAX ON LUMP SUM DISTRIBUTIONS.— * * *

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(4) DEFINITIONS AND SPECIAL RULES.—

(A) LUMP SUM DISTRIBUTION.—For purposes of this section and section 403, the term "lump sum distribution" means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

(i) on account of the employee's death,

(ii) after the employee attains age 59½,

(iii) on account of the employee's separation from the service, or

(iv) after the employee has become disabled (within the meaning of section 72(m)(7))

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Clause (iii) of this subparagraph shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and clause (iv) shall be applied only with respect to an employee within the meaning of section 401(c)(1). Except for purposes of subsection (a)(2) and section 403(a)(2), a distribution of an annuity contract from a trust or annuity plan referred to in the first sentence of this subparagraph shall be treated as a lump sum distribution.

For purposes of this subparagraph, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this subsection, subsection (a)(2) of this section, and subsection (a)(2) of section 403, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(o)(5)).

(B) ELECTION OF LUMP SUM TREATMENT.—For purposes of this section 403, no amount which is not an annuity contract may be treated as a lump sum distribution under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee.

(C) AGGREGATION OF CERTAIN TRUSTS AND PLANS.—For purposes of determining the balance to the credit of an employee under subparagraph (A)—

(i) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all profit-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

(ii) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

(D) TOTAL TAXABLE AMOUNT.—For purposes of this section and section 403, the term "total taxable amount" means, with respect to a lump sum distribution, the amount of such distribution which exceeds the sum of—

(i) the amounts considered contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore distributed to him which were not includible in gross income, and

(ii) the net unrealized appreciation attributable to that part of the distribution which consists of the securities of the employer corporation so distributed.

(E) ORDINARY INCOME PORTION.—For purposes of this section, the term "ordinary income portion" means, with respect to a lump sum distribution, so much of the total taxable amount of such distribution as is equal to the product of such total taxable amount multiplied by a fraction—

(i) the numerator of which is the number of calendar years of active participation by the employee in such plan after December 31, 1973, and

(ii) the denominator of which is the number of calendar years of active participation by the employee in such plan.

(F) EMPLOYEE.—For purposes of this subsection and subsection (a)(2), except as otherwise provided in subparagraph (A), the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1) and the employer of such individual is the person treated as his employer under section 401(c)(4).

(G) COMMUNITY PROPERTY LAWS.—The provisions of this subsection, other than paragraph (3), shall be applied without regard to community property laws.

(H) MINIMUM PERIOD OF SERVICE.—For purposes of this subsection (but not for purposes of subsection (a)(2) or section 403(a)(2)(A)), no amount distributed to an employee from or under a plan may be treated as a lump sum distributed under subparagraph (A) unless he has been a participant in the plan for 5 or more taxable years before the taxable year in which such amounts are distributed.

(I) AMOUNTS SUBJECT TO PENALTY.—This subsection shall not apply to amounts described in clause (ii) of subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

(J) UNREALIZED APPRECIATION OF EMPLOYER SECURITIES.—In the case of any distribution including securities of the employer corporation which, without regard to the requirement of subparagraph (H), would be treated as a lump sum distribution under subparagraph (A), there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation so distributed. In the case of any such distribution or any lump sum distribution including securities of the employer corporation, the amount of net unrealized appreciation of such securities and the resulting adjustments to the basis of such securities shall be determined under regulations prescribed by the Secretary. This subparagraph shall not apply to distributions of accumulated deductible employee contributions (without the meaning of section 72(o)(5)).

(K) SECURITIES.—For purposes of this subsection, the terms "securities" and "securities of the employer corporation" have the respective meanings provided by subsection (a)(3).

(L) ELECTION TO TREAT PRE-1974 PARTICIPATION AS POST-1973 PARTICIPATION.—For purposes of subparagraph (E), subsection (a)(2), and section 403(a)(2), if a taxpayer elects (at the time and in the manner provided under regulations prescribed by the Secretary), all calendar years of an employee's active participation in all plans in which the employee has been an active participant shall be considered years of active participation by such employee after De-

cember 31, 1973. An election made under this subparagraph, once made, shall be irrevocable and shall apply to all lump-sum distributions received by the taxpayer with respect to the employee. This subparagraph shall not apply if the taxpayer received a lump-sum distribution in a previous taxable year of the employee beginning after December 31, 1975, unless no portion of such lump-sum distribution was treated under section 402(a)(2) or 403(a)(2) as gain from the sale or exchange of a capital asset held for more than 1 year.

(M) BALANCE TO CREDIT OF EMPLOYEE NOT TO INCLUDE AMOUNTS PAYABLE UNDER QUALIFIED DOMESTIC RELATIONS ORDER.—For purposes of this subsection, subsection (a)(2) of this section, and section 403(a)(2), the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(o)).

(f) NOTICE OF RECIPIENTS OF DISTRIBUTIONS ELIGIBLE FOR ROLLOVER TREATMENT.—

(1) IN GENERAL.—The plan administrator of any plan shall, when making a qualifying rollover distribution, provide notice to the recipient that—

(A) such distribution, to the extent transferred to an eligible retirement plan under subsection (a)(5) or section 403(a)(4), will not be subject to tax, and

(B) such transfer must be made within 60 days of the date on which the recipient received such distribution.

(2) DEFINITIONS.—For purposes of this subsection, the terms "qualifying rollover distribution" and "eligible retirement plan" have the respective meanings given such terms by subsection (a)(5)(D).

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Subpart B—Special Rules

Sec. 410. Minimum participation standards.
Sec. 411. Minimum vesting standards.
Sec. 412. Minimum funding standards.
Sec. 413. Collectively bargained plans.
Sec. 414. Definitions and special rules.
Sec. 415. Limitations on benefits and contributions under qualified plans.
Sec. 416. Special rules for top-heavy plans.
Sec. 417. Definitions and special rules for purposes of minimum survivor annuity requirements.

SEC. 410. MINIMUM PARTICIPATION STANDARDS.

(a) PARTICIPATION.—

(1) MINIMUM AGE AND SERVICE CONDITIONS.—

(A) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

(i) the date on which the employee attains the age of **[**25**]** *21*; or

(ii) the date on which he completes 1 year of service.

(B) SPECIAL RULES FOR CERTAIN PLANS.—

(i) In the case of any plan which provides that after not more than 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "3 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii)) by an employer which is exempt from tax under section 501(a) which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting [**"30" for "25"**] *"26" for "21"*. This clause shall not apply to any plan to which clause (i) applies.

(2) MAXIMUM AGE CONDITIONS.—A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part excludes from participation (on the basis of age) employees who have attained a specified age, unless—

(A) the plan is a—

(i) defined benefit plan, or

(ii) target benefit plan (as defined under regulations prescribed by the Secretary), and

(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.

(3) DEFINITION OF YEAR OF SERVICE.—

(A) GENERAL RULE.—For purposes of this subsection, the term "year of service" means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, under regulations prescribed by the Secretary of Labor, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

(B) SEASONAL INDUSTRIES.—In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

(C) HOURS OF SERVICE.—For purposes of this subsection, the term "hours of service" means a time of service determined under regulations prescribed by the Secretary of Labor.

(D) MARITIME INDUSTRIES.—For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out this subparagraph.

(4) TIME OF PARTICIPATION.—A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements.

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(5) BREAKS IN SERVICE.—

(A) GENERAL RULE.—Except as otherwise provided in subparagraphs (B), (C), and (D), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of paragraph (1).

(B) EMPLOYEES UNDER 3-YEAR 100 PERCENT VESTING—In the case of any employee who has any 1-year break in service (as defined in section 411(a)(6)(A)) under a plan to which the service requirements of clause (i) of paragraph (1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(C) 1-YEAR BREAK IN SERVICE.—In computing an employee's period of service for purposes of paragraph (1) in the case of any participant who has any 1-year break in service (as defined in section 411(a)(6)(A)), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in paragraph (3)) after his return.

[(D) NONVESTED PARTICIPANTS.—In the case of a participant who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of paragraph (1) if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.]

(D) NONVESTED PARTICIPANTS.—

(i) IN GENERAL.—For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account in computing the period of service if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) YEARS OF SERVICE NOT TAKEN INTO ACCOUNT.—If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) NONVESTED PARTICIPANT DEFINED.—For purposes of clause (i), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E) SPECIAL RULE FOR MATERNITY OR PATERNITY ABSENCES.—

(i) GENERAL RULE.—In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service (as defined in section 411(a)(6)(A)) has occurred, the hours described in clause (ii).

(ii) HOURS TREATED AS HOURS OF SERVICE.—The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of such absence,

except that the total number of hours treated as hours of service under this clause by reason of any such pregnancy or placement shall not exceed 501 hours.

(iii) YEAR TO WHICH HOURS ARE CREDITED.—The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) YEAR DEFINED.—For purposes of this subparagraph, the term year means the period used in computations pursuant to paragraph (3).

(v) INFORMATION REQUIRED TO BE FILED.—A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

* * * * * * *

SEC. 411. MINIMUM VESTING STANDARDS.

(a) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1) and (2) of this subsection and the requirements of paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b).

(1) EMPLOYEE CONTRIBUTIONS.—A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

* * * * * * *

(4) SERVICE INCLUDED IN DETERMINATION OF NONFORFEITABLE PERCENTAGE.—In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age [22,] *18,* except that in the case of a plan which does not satisfy subparagraph (A) or (B) of paragraph (2), the plan may not disregard any such year of service during which the employee was a participant;

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan (as defined under regulations prescribed by the Secretary);

(D) service not required to be taken into account under paragraph (6);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

(F) years of service before the first plan year to which this section applies, if such service would have been disregarded under the rules of the plan with regard to breaks in service as in effect on the applicable date; and

(G) in the case of a multiemployer plan, years of service—

(i) with an employer after—

(I) a complete withdrawal of that employer from the plan (within the meaning of section 4203 of the Employee Retirement Income Security Act of 1974), or

(II) to the extent permitted in regulations prescribed by the Secretary, a partial withdrawal described in section 4205(b)(2)(A)(i) of such Act in conjunction with the decertification of the collective bargaining representative, and

(ii) with any employer under the plan after the termination date of the plan under section 4048 of such Act.

(5) YEAR OF SERVICE.—

(A) GENERAL RULE.—For purposes of this subsection, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has completed 1,000 hours of service.

(B) HOURS OF SERVICE.—For purposes of this subsection, the term "hours of service" has the meaning provided by section 410(a)(3)(C).

(C) SEASONAL INDUSTRIES.—In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

(D) MARITIME INDUSTRIES.—For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.

(6) BREAKS IN SERVICE.—

(A) DEFINITION OF 1-YEAR BREAK IN SERVICE.—For purposes of this paragraph, the term "1-year break in service" means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited

under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours service.

(B) 1 YEAR OF SERVICE AFTER 1-YEAR BREAK IN SERVICE.—For purposes of paragraph (4), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) [1-YEAR BREAK IN SERVICE] *5 CONSECUTIVE 1-YEAR BREAKS IN SERVICE* UNDER DEFINED CONTRIBUTION PLAN.—For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has [any 1-year break in service] *5 consecutive 1-year breaks in service,* years of service after [such break] *such 5-year period* shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before [such break.] *such 5-year period.*

[(D) NONVESTED PARTICIPANTS.—For purposes of paragraph (4), in the case of a participant who, under the plan does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.]

(D) NONVESTED PARTICIPANTS.—

(i) IN GENERAL.—For purposes of paragraph (4), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) YEARS OF SERVICE NOT TAKEN INTO ACCOUNT.—If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) NONVESTED PARTICIPANT DEFINED.—For purposes of clause (i), the term "nonvested participant" means a participant who does not have any nonfor-

feitable right under the plan to an accrued benefit derived from employer contributions.

(E) SPECIAL RULE FOR MATERNITY OR PATERNITY ABSENCES.—

(i) GENERAL RULE.—In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual;

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).

(ii) HOURS TREATED AS HOURS OF SERVICE.—The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per normal workday of absence,

except that the total number of hours treated as hours of service under this clause by reason of any such pregnancy or placement shall not exceed 501 hours.

(7) ACCRUED BENEFIT.—

(A) IN GENERAL.—For purposes of this section, the term "accrued benefit" means—

(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

(B) EFFECT OF CERTAIN DISTRIBUTIONS.—Notwithstanding paragraph (4), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than **[**$1,750**]** *$3,500* permitted under regulations prescribed by the Secretary, or

(ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Clause (i) of this subparagraph shall apply only if such distribution was made on termination of the employee's par-

ticipation in the plan. Clause (ii) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary.

(C) REPAYMENT OF SUBPARAGRAPH (B) DISTRIBUTIONS.—For purpose of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in subparagraph (B) unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph (B) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who—

(i) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(ii) resumes employment covered under the plan, and

(iii) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has any one-year break in service commencing after such withdrawal.

* * * * * * *

(11) RESTRICTIONS ON CERTAIN MANDATORY DISTRIBUTIONS.—

(A) IN GENERAL.—If the present value of any accrued benefit exceeds $3,500, such benefit shall not be treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant.

(B) DETERMINATION OF PRESENT VALUE.—For purposes of subparagraph (A), the present value shall be calculated by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

(b) ACCRUED BENEFIT REQUIREMENTS.—

(1) GENERAL RULES.—

(A) 3-PERCENT METHOD.—A defined benefit satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled if he commenced participation at the earliest possible entry age under the plan

and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) 133⅓ PERCENT RULE.—A defined benefit plan satisfies the requirements of this paragraph for a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) FRACTIONAL RULE.—A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date on which any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separa-

tion from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) ACCRUAL FOR SERVICE BEFORE EFFECTIVE DATE.—Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies, but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) FIRST TWO YEARS OF SERVICE.—Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "years of service" has the meaning provided by section 410(a)(3)(A).

(F) CERTAIN INSURED DEFINED BENEFIT PLAN.—Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan—

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of paragraphs (2) and (3) of section 412(i) (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 412(i) were satisfied.

(G) ACCRUED BENEFIT MAY NOT DECREASE ON ACCOUNT OF INCREASING AGE OR SERVICE.—Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before

entitlement to benefits payable under title II of the Social Security Act which benefits under the plan—

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits commence.

* * * * * * *

(3) YEAR OF PARTICIPATION.—

(A) DEFINITION.—For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 410(a)(5), *determined without regard to section 410(a)(5)(E))* as determined under regulations prescribed by the Secretary of Labor which provide for the calculation of such period on any reasonable and consistent basis.

* * * * * * *

(d) SPECIAL RULES.—

(1) COORDINATION WITH SECTION 401(a)4.— * * *

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[(6) ACCRUED BENEFIT NOT TO BE DECREASED BY AMENDMENT.—A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8), or section 4281 of the Employee Retirement Income Security Act of 1974.]

(6) ACCRUED BENEFIT NOT TO BE DECREASED BY AMENDMENT.—

(A) IN GENERAL.—A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8), or section 4281 of the Employee Retirement Income Security Act of 1974.

(B) TREATMENT OF CERTAIN PLAN AMENDMENTS.—For purposes of subparagraph (A), a plan amendment which has the effect of—

(i) eliminating or reducing a subsidy or an early retirement benefit, or

(ii) eliminating an optional form of benefit,

with respect to benefits accrued before the amendment shall be treated as reducing accrued benefits. In the case of a terminated plan, the preceding sentence shall not apply to a subsidy where the conditions for the subsidy have not been satisfied at the time of termination.

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SEC. 414. DEFINITIONS AND SPECIAL RULES.

(a) SERVICE FOR PREDECESSOR EMPLOYER.— * * *

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(o) QUALIFIED DOMESTIC RELATIONS ORDER DEFINED.—For purposes of this subsection and section 401(a)(13)—

(1) IN GENERAL.—

(A) QUALIFIED DOMESTIC RELATIONS ORDER.—The term "qualified domestic relations order" means a domestic relations order—

(i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

(B) DOMESTIC RELATIONS ORDER.—The term "domestic relations order" means any judgement, decree, or order (including approval of a property settlement agreement) which—

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, or child of a participant and

(ii) is made pursuant to a State domestic relations law (including a community property law).

(2) ORDER MUST CLEARLY SPECIFY CERTAIN FACTS.—A domestic relations order meets the requirements of this paragraph only if such order clearly specifies—

(A) the name and the mailing address (if available) of the participant and the name and mailing address of each alternate payee covered by the order,

(B) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(C) the number of payments or period to which such order applies, and

(D) each plan to which such order applies.

(3) ORDER MAY NOT ALTER AMOUNT, FORM, ETC., OF BENEFITS.—A domestic relations order meets the requirements of this paragraph only if such order—

(A) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(B) does not require the plan to provide increased benefits, and

(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(4) EXCEPTION FOR CERTAIN PAYMENTS MADE AFTER EARLIEST RETIREMENT AGE.—A domestic relations order shall not be treated as failing to meet the requirements of subparagraph (A) of paragraph (3) solely because such order requires that payment of benefits be made to an alternate payee—

(A) on or after the date on which the participant attains (or would have attained) the earliest retirement age (within the meaning of section 417(f)(3)),

(B) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only benefits actually accured), and

(C) in any form in which such benefits may be paid under the plan to the participant (other than in the form of joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

(5) TREATMENT OF FORMER SPOUSE AS SURVIVING SPOUSE FOR PURPOSES OF DETERMINING SURVIVOR BENEFITS.—To the extent provided in any qualified domestic relations order—

(A) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of sections 401(a)(11) and 417, and

(B) if married for at least 1 year, the surviving spouse shall be treated as meeting the requirements of section 417(d).

A plan shall not be treated as failing to meet the requirements of subsection (a) or (k) of section 401 which prohibit payment of benefits before termination of employment solely by reason of payments to an alternate payee pursuant to a qualified domestic relations order.

(6) PLAN PROCEDURES WITH RESPECT TO ORDERS.—

(A) NOTICE AND DETERMINATION BY ADMINISTRATOR.—In the case of any domestic relations order received by a plan—

(i) the plan administrator shall promptly notify the participant and any other alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(B) PLAN TO ESTABLISH REASONABLE PROCEDURES.—Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

(7) PROCEDURES FOR PERIOD DURING WHICH DETERMINATION IS BEING MADE.—

(A) IN GENERAL.—During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall segregate in a separate account in the plan or in an escrow account the amounts which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(B) PAYMENT TO ALTERNATE PAYEE IF ORDER DETERMINED TO BE QUALIFIED DOMESTIC RELATIONS ORDER.—If within 2 years the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administra-

tor shall pay the segregated amounts (plus any interest thereon) to the person or persons entitled thereto.

(C) PAYMENT TO PLAN PARTICIPANT IN CERTAIN CASES.—If within 2 years—

(i) it is determined that the order is not a qualified domestic relations order, or

(ii) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (plus any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(D) SUBSEQUENT DETERMINATION OR ORDER TO BE APPLIED PROSPECTIVELY ONLY.—Any determination that an order is a qualified domestic relations order which is made after the close of the 2-year period shall be applied prospectively only.

(8) ALTERNATE PAYEE DEFINED.—The term "alternate payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(9) CONSULTATION WITH THE SECRETARY OF LABOR.—In prescribing regulations under this subsection and section 401(a)(13), the Secretary shall consult with the Secretary of Labor."

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SEC. 417. DEFINITIONS AND SPECIAL RULES FOR PURPOSES OF MINIMUM SURVIVOR ANNUITY REQUIREMENTS.

(a) ELECTION TO WAIVE QUALIFIED JOINT AND SURVIVOR ANNUITY OR QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.—

(1) IN GENERAL.—A plan meets the requirements of section 401(a)(11) only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both), and

(ii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2) and (3) of this subsection.

(2) SPOUSE MUST CONSENT TO ELECTION.—Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A) the spouse of the participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) the participant establishes to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of

such other circumstances as the Secretary may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3) PLAN TO PROVIDE WRITTEN EXPLANATION OF JOINT AND SURVIVOR ANNUITY FORM OF BENEFIT.—Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary may prescribe), a written explanation of—

(A) the terms and conditions of the qualified joint and survivor annuity,

(B) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(C) the rights of the participant's spouse under paragraph (2), and

(D) the right to make, and the effect of, a revocation of an election under paragraph (1).

(4) SPECIAL RULES WHERE PLAN SUBSIDIZES COSTS.—

(A) IN GENERAL.—The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if the plan fully subsidizes the costs of such benefit.

(B) DEFINITION.—For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a particpant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(5) APPLICABLE ELECTION PERIOD DEFINED.—For purposes of this subsection, the term 'applicable election period' means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 90-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(b) DEFINITION OF QUALIFIED JOINT AND SURVIVOR ANNUITY.—For purposes of this section and section 401(a)(11), the term qualified joint and survivor annuity means and annuity—

(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(c) DEFINITION OF QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.—For purposes of this section and section 401(a)(11), the term "qualified preretirement survivor annuity" means a survivor annuity for the life of the surviving spouse of the participant if—

(1) the payments to the surviving spouse under such annunity are the same as (or the actuarial equivalent of) the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan if—

(A) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(B) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(i) separated from service on the date of death,

(ii) survived the earliest retirement age,

(iii) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(iv) died on the day after the day on which such participant would have attained the earliest retirement age, and

(2) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

(d) SURVIVOR ANNUITIES NEED NOT BE PROVIDED IF PARTICIPANT AND SPOUSE MARRIED LESS THAN 1 YEAR.—

(1) IN GENERAL.—Except as provided in paragraph (2), a plan shall not be treated as failing to meet the requirements of section 401(a)(11) merely because the plan provides that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) TREATMENT OF CERTAIN MARRIAGES WITHIN 1 YEAR OF ANNUITY STARTING DATE FOR PURPOSES OF QUALIFIED JOINT AND SURVIVOR ANNUITIES.—For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death.

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(e) RESTRICTIONS ON CASH-OUTS.—

(1) PLAN MAY REQUIRE DISTRIBUTION IF PRESENT VALUE NOT IN EXCESS OF $3,500.—A plan may provide that the present value

of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed $3,500. No distribution may be made under the preceding sentence after the annuity starting date unless the participant (or where the participant has died, the surviving spouse) consents in writing to such distribution.

(2) PLAN MAY DISTRIBUTE BENEFITS IN EXCESS OF $3,500 ONLY WITH CONSENT.—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $3,500, and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) DETERMINATION OF PRESENT VALUE.—For purposes of paragraphs (1) and (2), the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall be determined as of the date of the distribution and by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section and section 401(a)(11)—

(1) VESTED PARTICIPANT.—The term "vested participant" means any participant who has a nonforfeitable right (within the meaning of section 411(a)) to any portion of the accrued benefit derived from employer contributions.

(2) ANNUITY STARTING DATE.—The term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability).

(3) EARLIEST RETIREMENT AGE.—The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(4) Plan may take into account increased costs.—A plan may take into account in any equitable manner (as determined by the Secretary) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(5) CONSULTATION WITH THE SECRETARY OF LABOR.—In prescribing regulations under this section and section 401(a)(11), the Secretary shall consult with the Secretary of Labor.

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

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Subpart E—Registration of and Information Concerning Pension, Etc., Plans

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SEC. 6057. ANNUAL REGISTRATION, ETC.

(a) ANNUAL REGISTRATION.—

(1) GENERAL RULE.—Within such period after the end of a plan year as the Secretary may by regulations prescribe, the plan administrator (within the meaning of section 414(g)) of each plan to which the vesting standards of section 203 of part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 applies for such plan year shall file a registration statement with the Secretary.

(2) CONTENTS.—The registration statement required by paragraph (1) shall set forth—

(A) the name of the plan,

(B) the name and address of the plan administrator,

(C) the name and taxpayer identifying number of each participant in the plan—

(i) who, during such plan year, separated from the service covered by the plan,

(ii) who is entitled to a deferred vested benefit under the plan as of the end of such plan year, and

(iii) with respect to whom retirement benefits were not paid under the plan during such plan year,

(D) the nature, amount, and form of the deferred vested benefit to which such participant is entitled, and

(E) such other information as the Secretary may require.

At the time he files the registration statement under this subsection, the plan administrator shall furnish evidence satisfactory to the Secretary that he has complied with the requirement contained in subsection (e).

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(e) INDIVIDUAL STATEMENT TO PARTICIPANT.—Each plan administrator required to file a registration statement under subsection (a) shall, before the expiration of the time prescribed for the filing of such registration statement, also furnish to each participant described in subsection (a)(2)(C) an individual statement setting forth the information with respect to such participant required to be contained in such registration statement. *Such statement shall also in-*

clude a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

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CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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Subchapter A—Additions to the Tax and Additional Amounts

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SEC. 6652. FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENT, ETC.

(a) RETURNS RELATING TO INFORMATION AT SOURCE, PAYMENTS OF DIVIDENDS, ETC., AND CERTAIN TRANSFERS OF STOCK.—* * *

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(i) FAILURE TO GIVE NOTICE TO RECIPIENTS OF CERTAIN QUALIFYING ROLLOVER DISTRIBUTIONS.—In the case of each failure to provide notice as required by section 402(f), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to $10 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $5,000.

[(i)] *(j)* ALCOHOL AND TOBACCO TAXES.—

For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E.

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VI. ADDITIONAL VIEWS OF HON. BILL FRENZEL

In general, I support the Ways and Means Committee approved version of H.R. 4280, the Retirement Equity Act. Legislation is long overdue that would eliminate many of the provisions of our pension laws which have the effect of discriminating against women. I am concerned, however, that insufficient attention was paid to the impact this proposal would have on the solvency of pension plans in general, and that some of the provisions, while well intentioned, may simply not work, or will have unintended effects.

The first provision about which I have some concern deals with lowering the maximum participation age to age 21. I think, in general, this is one of the more meritorious provisions in the bill. I also believe, however, that the Ways and Means Committee should have retained the original provision in H.R. 4280 which provided a special rule for defined benefit plans. Under H.R. 4280, prior to the Committee's action, defined benefit plans would have been permitted to retain the age 25 maximum participation age, but would have been required to give retroactive credit for all service after age 21 once the participant reached age 25, or earlier if the plan had earlier vesting. The Ways and Means Committee eliminated this provision and provided no special rule for defined benefit plans. In my judgment, the lack of a special rule will add needless complexity to the administration of defined benefit plans, and may very well result in a shift away from this form of pension plan coverage.

I was also concerned about the potential for the retroactive application of the lowering of the minimum vesting age from 22 to 18, and the potentially adverse impact the proposal would have had on pension plan solvency. It is now my understanding, however, that the bill addresses this concern and that plans will not be required to count years of service between ages 18 and 22 prior to 1985 for benefit accrual purposes. In my view, this is the best solution and will provide working individuals with the pension coverage they deserve for all of their working years without creating a solvency problem for the plan itself.

A third provision I am concerned about deals with the starting date for automatic joint and survivor annuity coverage. Under the Senate bill, joint and survivor annuity coverage is automatic after the participant completes 10 years of service and has attained the age of 45. Under the Education and Labor Committee version of H.R. 4280, joint and survivor annuity coverage becomes automatic after the participant completes 10 years of service, regardless of age. The Ways and Means Committee bill, however, rejects both of these rules and adopts a rule requiring that joint and survivor annuity coverage is automatic at the annuity starting date, and a preretirement survivor annuity is automatic when the participant has any vested benefits under the plan. While a rule of this type

may have the initial effect of providing more plan participants with joint and survivor annuity coverage, it may also have the effect of discouraging employers from making available plans that offer rapid vesting. I hope that the Senate proposal will be accepted in Conference.

As I stated before, I do generally support this bill and I intend to support it on the House floor. It is well intended and, if it works the way it is supposed to, some necessary equity will have been added to our pension laws. I only hope that, in our zeal to enact legislation to eliminate unnecessary *de facto* discrimination in our pension laws, we have not made changes that will have the net effect (as did ERISA) of discouraging pension plans in general. I do not think that will be the case, but in this complex area of the law there is clearly a risk.

BILL FRENZEL.

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